UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Policy review

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Implications for developing countries

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Foreword

Digitalization of economies has led to a surge in e-commerce and digital trade around the world. It has also accelerated the development of a range of innovations being undertaken by tax administrations, both in how they interact with taxpayers and in their internal operations. With the ongoing shift to digital services and digital channels dominating interactions with taxpayers, adequate taxation of e-commerce has become an urgent financial and policy priority.

This report is a timely contribution to understand the significant implications and challenges of e-commerce and digital trade for taxation authorities, based on the policies put in place by several countries. Understanding different approaches to e-commerce, digital trade and taxation is important to facilitate international trade and online commerce. The report identifies key concerns that need to be addressed in term of policies and implementation mechanisms.

Based on the various experiences at the global, regional and national level, it considers possible future policy options, taking the concerns of all stakeholders into account. The role of tax administrations needs to evolve to keep abreast of the pace of change of new technologies and the economic landscape. Tax administrations are exploring innovative solutions to strengthen domestic resource mobilization and stabilize finances greatly needed for investments in development.

While objectives, functions and processes of tax administrations are similar in most countries, the scope, timing, and choice of instruments used have to be adapted to national contexts. This report presents an overview of the different strategies, solutions, technical instruments, and approaches being used in various countries in the area of indirect taxation of domestic and cross-border e-commerce. It surveys and analyses pertinent legal and policy issues that policymakers need to consider in this context.

I would like to acknowledge with appreciation the valuable contributions received from several stakeholders. I hope that the findings of the report will serve as a basis for a much-needed global dialogue on this topic of growing importance.

Torbjörn Fredriksson

Head, E-Commerce and Digital Economy Branch

Division on Technology and Logistics

Abbreviations

ADB	Asian Development Bank
ATAF	African Tax Administration Forum
B2B	Business-to-business
C2C	Consumer-to-consumer
CATA	The Commonwealth Association of Tax Administrators
CARICOM	Caribbean Community
COTA	Caribbean Organisation of Tax Administrators
CIAT	Inter-American Center of Tax Administrations
COVID-19	Coronavirus disease
DIP	Digital intermediation platform
DRM	Domestic Revenue Mobilization
DTAs	Double Taxation Agreements
ECLAC	Economic Commission for Latin America and the Caribbean
EU	European Union
GST	Goods and services tax
G20	Group of Twenty
ICT	Information and communications technology
IDB	Inter-American Development Bank
IMF	International Monetary Fund
IoT	Internet of Things
LAC	Latin America and the Caribbean
LDC	Least developed country
MSME	Micro, small and medium-sized enterprise
OECD	Organisation for Economic Co-operation and Development
PE	Permanent Establishment
PITAA	The Pacific Islands Tax Administrators' Association
SDGs	Sustainable Development Goals
SME	Small and medium-sized enterprise
VAT	Value added tax
WBG	World Bank Group
WCO	World Customs Organization
WTO	World Trade Organization

Notes

Within the United Nations Trade and Development (UNCTAD) Division on Technology and Logistics, the E-Commerce and Digital Economy Branch carries out policy-oriented analytical work on the development implications of information and communications technologies (ICTs), e-commerce and the digital economy. It is responsible for the preparation of the Digital Economy Report (DER) as well as thematic studies on ICT for Development.

The Branch promotes international dialogue on issues related to ICTs for development and contributes to building developing countries' capacities to measure the digital economy and to design and implement relevant policies and legal frameworks. It also monitors the global status of e-commerce legislation (UNCTAD Cyberlaw Tracker). Since 2016, the Branch has coordinated a multi-stakeholder initiative entitled eTrade for all (etradeforall.org), which aims to improve the ability of developing countries, particularly least developed countries, to use and benefit from e-commerce. UNCTAD's work on E-commerce and Law Reform has been supporting developing countries in Africa, Asia and the Pacific, and Latin America in their efforts to establish legal regimes that address challenges raised by ICTs to ensure trust in online transactions, ease the conduct of domestic and international trade online, and offer legal protection for users and providers of e-commerce and e-government services.

When the United States is mentioned, reference is made to the United States of America, and when the United Kingdom is mentioned, reference is made to the United Kingdom of Great Britain and Northern Ireland.

Reference to companies and their activities should not be construed as an endorsement by UNCTAD of those companies or their activities.

The following symbols may have been used in the tables:

Two dots (..) indicate that data are not available or are not separately reported. Rows in tables have been omitted in those cases where no data are available for any of the elements in the row.

A dash (—) indicates that the item is equal to zero or its value is negligible.

Use of an en dash (-) between dates representing years signifies the full period involved, including the beginning and end years.

The term "dollars" ($) refers to United States of America dollars, unless otherwise indicated. Details and percentages in tables do not necessarily add up to the totals because of rounding.

Executive summary

Digital transformation is drastically changing how people and businesses interact and conduct commerce. It is transforming social, business, and economic norms and changing the way we interact, consume and do business. This facilitates e-commerce in both existing and emerging markets and allows for more products to be delivered digitally. New opportunities for growth exist as new ways of business gain pace and levels of connectivity increase. These rapidly developing modern technologies pose innumerable challenges and questions for governments and tax authorities. With many governments under unprecedented fiscal strain and with digital activity accelerating, tax authorities are grappling with the consequences of this shift for the sustainability of their tax bases and the efficient administration and collection of taxes.

Taxing the digital economy, e-commerce and digital trade presents unique challenges for policymakers and tax administrations. The challenges associated with developing new mechanisms and frameworks for taxing goods and services in the digital economy are increasingly acute, but not new. It is timely to revisit such issues and analyze the prospects and possible advances to determine the impact of the digital economy on tax systems. Significant changes to business models and value creation have implications for taxation, offering opportunities for both the private sector, by expanding potential markets, and governments, through a potential increase in revenues from new sources of taxation. However, it also raises a need for governments to consider how to adapt their tax systems to the growing role of e-commerce and digital trade.

E-commerce and the process of digital transformation also pose a threat to government revenues through tax base erosion, primarily because of the unique mechanisms inherent to e-commerce and digital delivery of products. Digital platforms and online marketplaces facilitate numerous transactions between buyers and sellers. However, this abundance of online interactions and transactions on platforms gives rise to concerns regarding the clarity and assessment of tax responsibilities and the methods used for tax collection. These challenges can impede the accurate recording and traceability of both transactions and taxpayers. Governments need a comprehensive understanding of how to adapt their existing taxation systems, including with regard to indirect taxation.

Tax controlling and auditing online transactions can be challenging. There is uncertainty concerning the nature of the relation (nexus) between jurisdictions, potential taxpayers and businesses for transactions, which can be either domestic or cross-border. Tax increasingly has to be collected from millions of end-users rather than from a small number of intermediaries for "traditional commerce".

Digital trade, which involves digitally ordered and/or digitally delivered products across borders, confronts tax administrations in all countries with new challenges. One of the key impacts is the possibility for non-resident vendors to offer their goods and services without a permanent or fixed establishment in the territory of the buyer. However, the administration of indirect taxation in the form of value added tax (VAT) or goods and services tax (GST) is not easy, especially when imposed on non-resident vendors. This is especially pertinent for digitally delivered services that, in contrast to digitally ordered goods, do not pass through customs administrations.

Developing countries are increasingly implementing new rules for e-commerce, but at different speed and with significant diversity in their implementation. A balance needs to be struck between securing tax collection while ensuring that collection processes are neither overly complex nor discriminatory. There is no “one-size-fits all” policy or legislative approach. Responses and areas of reform may depend on the market size, technological capacity, the role of the informal economy, as well as other social, economic and legislative considerations. While some developing countries have already adopted a strategy to regulate e-commerce and to address the main indirect taxation issues, others are still only at the beginning of this process. Administrative flexibility is also important to ensure that adjustments and improvements can be adopted across the entire tax system.

The multiplicity of options induces a potentially complex environment where foreign sellers may avoid paying or remit taxes due and/or where the compliance costs may deter firms from becoming digital, certainly evidencing a need for harmonization.

The main experiences and solutions explored in this study cover the potential role of digital platforms and marketplaces at the core of the system and the initiatives and rules to monitor and manage non-resident vendors. Interestingly, all these solutions can contribute to improving a major shortfall of digital trade commonly observed beyond the taxation issues, namely the lack of reliable data and information about the users and transactions performed online.

Role of the marketplaces at the core of e-commerce

- Online marketplaces intermediate large numbers of transactions between multiple buyers and sellers, often across borders. This makes them central nodes in the e-commerce system and in turn useful as potential tax collectors and sources of information.
- As tax collectors they may play a role for both domestic and cross-border transactions.
- As a source of information, they may provide information that can enable revenue authorities to implement proper risk management from huge quantities of data centralized and shared.
- Relying on digital platforms to collect indirect taxes can be an opportunity to tax the unregistered economic operators (informal sector) doing business through e-commerce platforms.

VAT registration for non-residents

- Simplified registration and compliance regimes can provide an effective solution to collect VAT on cross-border services in business-to-consumer (B2C) transactions. The last stage of VAT collection mechanism is the weakest link of this tax, since final consumers are not VAT registered. This weakness is exacerbated when vendors are non-tax-resident. Their VAT registration aims at reducing the risk of revenue losses at this stage.
- Developing countries are increasingly adopting regulations requiring non-resident vendor to register for VAT with multiple different scenarios. A growing number of developing economies have also implemented a simplified registration and compliance regime for non-resident suppliers.

Withholding and reverse charge mechanisms (business-to-business (B2B) e-commerce only)

- **Some countries have implemented withholding tax mechanisms to extract VAT/GST on payments to non-resident vendors.**

A withholding tax mechanism is typically introduced through banks or a financial intermediary. Beyond VAT, it aims at protecting countries against tax planning and avoidance that may occur more often in the context of digitalization. However, Double Taxation Agreements (DTAs) may limit the application of withholding tax mechanisms.

- **Reverse charge mechanisms shift the responsibility for paying VAT or GST from the supplier to the buyer.**

This mechanism may be viewed as a special case of the withholding instrument. While in a traditional VAT system, vendors generally charge VAT on their supply of goods or services, collect tax from the customer, and remit it to the tax authorities. Under the reverse charge mechanism, it is the customers that are responsible for paying VAT due on a transaction directly to the tax authorities.

Although most developing countries are implementing new taxation rules at the country level, a regional approach may have many benefits. A regional approach to addressing the challenges of indirect taxation of e-commerce may be specifically relevant for developing countries because: (1) many developing countries belong to a regional economic community (and some even to a customs union), and a regional approach to taxation could foster economic integration; (2) the bargaining power of individual countries remains limited against multinational digital platforms, and regional cooperation may reinforce their position; and (3) regional cooperation may secure revenue and reduce compliance costs by avoiding multiple disparate registration processes.

Despite remaining challenges, developing countries are making meaningful progress towards taxing the digital economy. Challenges with the taxation of the digital economy have led to tax reform initiatives that could significantly alter current tax systems and accelerate the taxation of the digital economy. As of June 2024, 101 countries had enacted indirect taxes on transactions in the digital economy, with the aim of enhancing efficiency. The evolution of digital administration responses to the challenges of digitalization are not restricted simply to tax policy and legislative changes. Many developing countries are also adopting technological solutions to improve their own tax administrative processes related to tax collection and compliance. Moreover, new communications and information approaches are being considered to interact with taxpayers under a new framework, in which a mutual exchange between transparency and certainty with them can be established. What is fundamental is a dual focus on enforcement and facilitation, which will underpin a range of desirable reforms to achieve modest, but consistent, revenue gains in developing countries. In turn, countries can make meaningful progress towards effective, equitable and accountable tax systems.

Introduction

Digitalization of the economy has reshaped the dynamics of interactions and trade for both individuals and businesses, offering an unparalleled expansion of global trade, with businesses and consumers having direct access to a wide range of goods and services that were previously out of reach. It also offers governments the possibility of increasing their fiscal revenues. However, digital adoption, including in connection with the adaptation of taxation systems, is uneven around the globe with many economies still on the digital sidelines.

This report focuses on the implications for developing countries of indirect taxation of e-commerce and digital trade. It provides an overview of the main challenges, implications and recommendations for tax administrations, capitalizing on experiences of policies and actions put in place in several regions and countries and from international and regional organizations. It introduces recent trends in e-commerce, explores why e-commerce gives rise to unique taxation considerations, and defines various forms of e-commerce and digital trade. It contextualizes these issues within the broader landscape of indirect taxation in developing countries, establishing a connection between the indirect taxation challenges faced by developing countries and the requirements of e-commerce. Finally, it presents an overview of the primary issues and obstacles related to indirect taxation of e-commerce and digital trade, drawing upon insights gained from both developed and developing countries.

In addition, the annex of the report presents a compilation of contributions prepared by governments, international organizations, civil society and private sector stakeholders, shining a light on challenges and solutions to the adaptation of indirect taxation systems to e-commerce and digital trade.

By bringing together recent research and country experiences, the report highlights possible options for developing countries that seek to improve their systems for raising government revenue through indirect taxation. It reviews technical challenges to establishing policies and implementation structures. It also outlines approaches to overcome them and increases awareness of the specificities of e-commerce and digital trade indirect taxation.

A. Trends in e-commerce and digital trade and implications for taxation

For many developing countries, e-commerce and digital trade have the potential to promote economic growth, job creation and economic diversification. Additional opportunities include generating revenues, notably for governments through tax collection on e-commerce trade flows and activity. Conducting digital trade and business through online platforms makes e-commerce a potential economic driver. This potential can be fully harnessed if governments in developing countries succeed in capturing the opportunities presented by digital transformation and e-commerce. However, many countries encounter obstacles when it comes to enabling widespread access to e-commerce and digital trade. These challenges often revolve around aspects such as digital infrastructure development, legal and regulatory frameworks, trade facilitation, logistical hurdles and digital literacy.[1]

1. E-commerce and digital trade are growing fast

The pace of digital transformation, which had been steadily increasing over the past decade, was further accelerated during the COVID-19 pandemic. In 2022, it is estimated that almost $ 27 trillion of e-commerce sales were generated by businesses across 43 developed and developing economies accounting for around three quarters of worldwide GDP. This represents a 26 per cent increase over pre-pandemic (2019) levels.[2] This upward trend has been maintained by the adoption of digital technologies, including for online purchases, specifically in consumer goods, resulting in a surge in e-commerce and digital transformation.[3]

Figures from the International Telecommunication Union (ITU) show an uptick in consumer e-commerce activity. The average share of Internet users who made purchases online increased from 53 per cent before the pandemic (2019) to 60 per cent following the onset of the pandemic (2021), across 67 countries with statistics available. Businesses and people moved online to purchase the goods and services they needed, with a significant uptake in e-commerce activity in almost all countries for which data are available, as evidenced in Figure 1. The Figure also illustrates the wide divide in the uptake of online shopping, ranging from less than 5 per cent in some developing countries to more than 80 per cent in some developed ones.

E-commerce sales are estimated to have risen by 10 per cent - to $27 trillion - in 2022

In 2021, online shopping spanned from under 5% in developing nations to over 80% in developed ones

1 UNCTAD's research on the eTrade readiness of developing countries: https://unctad.org/topic/ecommerce-and-digital-economy/etrade-readiness-assessments-of-LDCs
2 https://unctad.org/system/files/official-document/dtlecde2024d3_en.pdf
3 https://unctad.org/system/files/official-document/tdb_ede5d2_en.pdf

Figure 1
E-commerce through the COVID-19 pandemic

Source: UNCTAD based on Eurostat Digital Economy and Society Statistics database, OECD ICT Access and Usage by Households and Individuals database, ITU World.

Note: "2023" = latest available observation from 2020-23; "2019" = latest available observation from 2017-19.

Huge increases in online shopping have been observed in many countries. In 2023, two thirds of Internet users in Bahrain shopped online, five times more than in 2019 (13 per cent) - just four years earlier but before the COVID-19 pandemic. In the United Arab Emirates, the share is even higher, at three quarters – having tripled since 2019. Malaysia has seen a doubling in online shopping, from 35 per cent of Internet users in 2019 to 70 per cent in 2023. This has brought these countries into the same ballpark as most developed countries, across which online shopping rates of 60 per cent or more are common, as well as China (80 per cent). Although the rate of online shopping is much lower in Egypt, at 36 per cent of Internet users in 2023, this is almost four times greater than in 2019. Similarly in Côte d'Ivoire 20 per cent of Internet users shopped online in 2022, double the rate in 2019. As more people have begun shopping online, and the amount each person spends online is likely also increasing, the value of online retail sales and transactions through online platforms have also increased substantially.[4]

Variation in e-commerce adoption by individuals reflects different levels of digitalization achieved within developing countries. Major digital divides and imbalances remain, both within countries, between rural and urban areas, and

[4] https://unctad.org/news/covid-19-boost-e-commerce-sustained-2021-new-unctad-figures-show and https://unctad.org/publication/business-e-commerce-sales-and-role-online-platforms

between countries. Approximately 26 per cent of people in low-income countries had access to the Internet in 2022 according to ITU data.[5] Low download speeds, inadequate IT infrastructure and high pricing structures are still preventing generalized access and affordability of the Internet, a prerequisite to access to e-commerce.

There are significant divides between urban and rural areas. In addition, gender divides preclude women's full participation in the digital economy, especially in Least Developed Countries (LDCs). This is due to barriers inhibiting mobile phone ownership and access to, and use of, the Internet. These barriers are complex in nature and reflect income inequalities, discriminatory gender norms, as well as education and digital skills gaps (UNCTAD, 2021).

Digitalization has enabled financial inclusion through transfers of money and digital payment mechanisms. In developing countries, the share of adults making or receiving digital payments grew from 35 per cent in 2014 to 57 per cent in 2021, according to the Global Findex Database (World Bank 2021).[6] In Sub-Saharan Africa, 33 per cent of the adult population had a mobile money account in 2021, which represents the largest share of any region in the world as the world global average was 10 per cent.[7] The increase in financial inclusion has positive implications for bringing more people online in a secure and inclusive manner and presents new opportunities to better serve women, poor people, and other groups of people often largely excluded from the formal financial system. It also enables more people and enterprises to engage in e-commerce and digital trade.

2. Definitions of e-commerce and digital trade

E-commerce transactions have been defined as the "sale or purchase of goods and services conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders" (OECD, 2011a, 2011b). This may include selling via websites, applications and online marketplace platforms with digital ordering features, through voice commands issued to virtual assistants (such as those embedded in mobile phones and smart speakers) as well as via automated computer-to-computer ordering systems.[8]

By contrast, the mode of payment is not a determining factor. As long as an order is placed digitally, the transaction is classified as e-commerce, even if the payment is done through cash on delivery or through another offline means. Similarly, the product purchased may be digitally or physically delivered.

An order placed in-person, made by telephone or fax, or communicated via manually typed messages[9], is under the international definition not considered

In developing countries, digital payment use rose from 35% in 2014 to 57% in 2021

[5] See ITU, 2022 'Facts and Figures 2022', available at, https://www.itu.int/hub/2022/11/ facts-and-figures-2022-global-connectivity-statistics/

[6] See World Bank Group, 2021, 'The Global Findex Database 2021: Financial Inclusion, Digital Payments, and Resilience in the Age of COVID-19' available at, https://www.worldbank.org/en/publication/ globalfindex

[7] Sub-Saharan Africa is home to all 11 economies in which a larger share of adults only had a mobile money account rather than a bank or other financial institution account.

[8] Electronic data interchange (EDI) is the computer-to-computer transmission of business data – such as shipping orders, purchase orders, invoices and requests for quotations – in an electronic format using agreed standards. The messages are composed and processed without human intervention, which increases the speed of order processing and reduces errors. EDI is used in a wide variety of industries, including food, retail, logistics and manufacturing, to manage international supply chains efficiently (e.g., just-in-time inventory management).

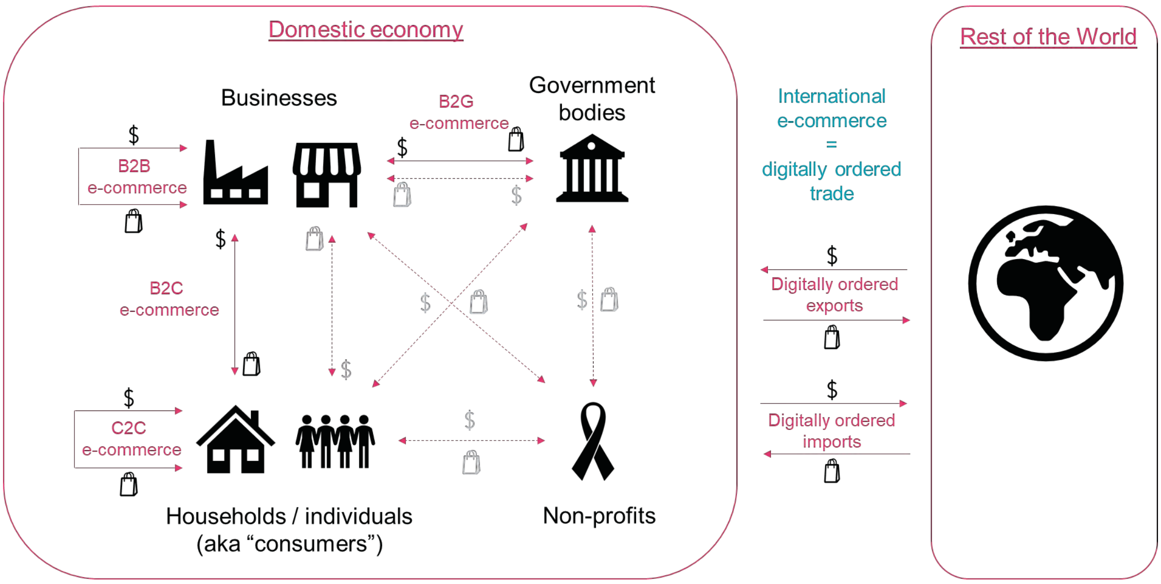
[9] Where manually typed messages are automatically processed, leading to an order being placed/received, this meets the definition of digital ordering. Some "chat bots" or "virtual agents" can take orders through an automated "structured conversation," during which the customer is prompted to provide the information needed to fill in an order form by a "computer generated, animated, artificial intelligence virtual character that serves as an online customer service representative" (IMF, OECD, UNCTAD and WTO, 2023).

an e-commerce transaction because these ordering channels are not "specifically designed for the purpose of receiving or placing orders."

Businesses are the main actors in e-commerce (UNCTAD, 2023) – both as sellers and as buyers (i.e., of inputs purchased from other businesses). Households are also very visibly active in e-commerce, most often as buyers, but sometimes also as sellers of goods and services. Nevertheless, both government bodies and non-profit organizations use e-commerce to make purchases and even sell goods and services. For example, government-run train, airline and bus companies often sell tickets online.

As a result, e-commerce transactions happen between all sectors of the economy. The most important e-commerce flows can be labeled as business-to-business (B2B), business- to-consumer (B2C), business-to-government (B2G), and consumer-to-consumer (C2C) (Figure 2).

Figure 2
Units within all sectors of the economy engage in e-commerce



Source: UNCTAD.

A further important flow is e-commerce transactions occurring between these sectors and buyers or sellers abroad. International e-commerce constitutes digitally ordered trade, one component of digital trade. For more information on the relationship between e-commerce and digital trade see Box 1.

Box 1
E-commerce and digital trade

Digital trade consists of "all international trade transactions that are digitally ordered and/or digitally delivered" (IMF, OECD, UNCTAD and WTO, 2023) and is comprised of two components: digitally ordered trade and digitally delivered trade (Figure 3).

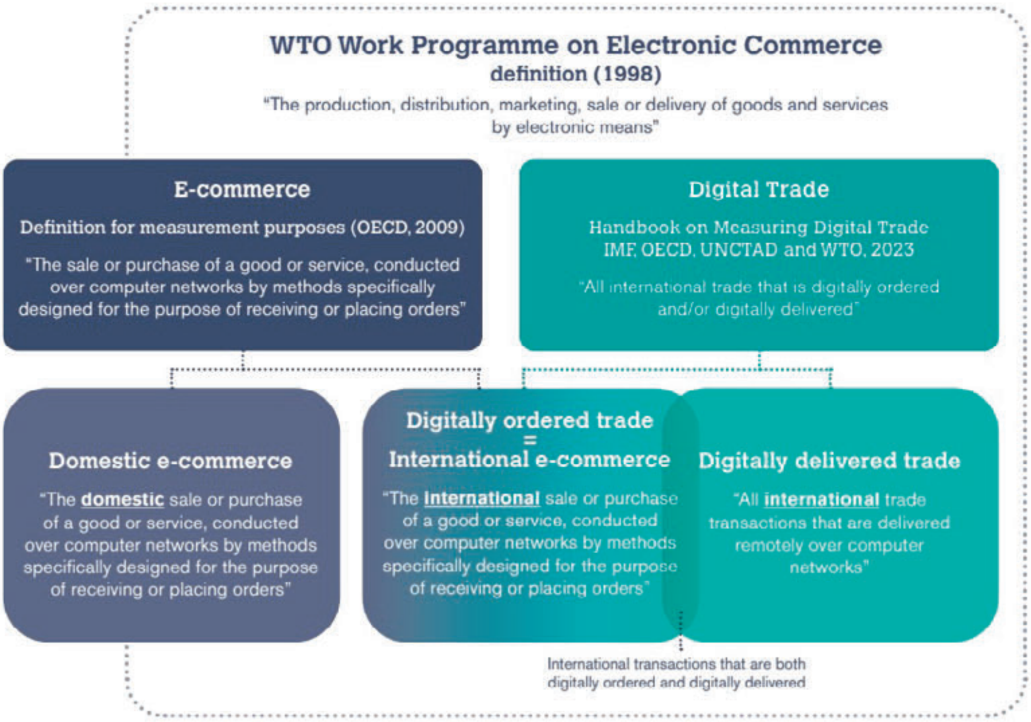
Digitally ordered trade comprises international e-commerce transactions – those where the buyer and seller are resident in different economic territories. As a result, some – but by no means all – e-commerce transactions are recorded within digital trade and digitally delivered trade is a subset of e-commerce.

Digitally delivered trade includes trade in services that are digital in nature, such as streaming music and video services, cloud services and online software applications. Also covered are services delivered through inter-personal interactions taking place online (such as in telemedicine, e-learning), and those where in-person interactions have been replaced by online interfaces (such as in online banking). The delivery of services outputs such as architectural designs, research and consultancy reports, and accounting services in the form of digital files also counts toward digitally delivered trade.

Although some of the most well-known digitally delivered services – such as streaming media subscriptions – are often also digitally ordered, this is far from the case for all digitally delivered services. For example, both consumers and businesses commonly sign up in presence for telecommunications services (which are digitally delivered). Digitally delivered trade should therefore not be considered as a sub-component of e-commerce. Digitally delivered services transactions (including trade transactions) may be of interest from a taxation standpoint; nevertheless, only those which are digitally ordered are e-commerce transactions.

Source: UNCTAD

Figure 3
E-commerce and digital trade – fundamental concepts and definitions



Note: The statistical definitions of e-commerce and digital trade are fully compatible with the WTO definition of the Work Programme on Electronic Commerce. In addition to cross-border e-commerce, the WTO Work Programme also covers the domestic e-commerce activities of foreign owned or foreign-controlled service suppliers. The definition of digital trade given in this Handbook is also compatible with the description of e-commerce in IMF (2009) (i.e., *"e-commerce is a method of ordering or delivering products at least partly by electronic means, such as through the internet or other computer mediated networks"*).
Source: IMF, OECD, UNCTAD and WTO.

The nature of the product being transacted also matters. As noted above, both goods and services can be digitally ordered. When the seller is resident in the taxing jurisdiction, the collection of direct or indirect taxes should be relatively straightforward. However, when the seller is not resident – and the transaction is a digital trade transaction – the nature of the product being transacted has implications for taxability.

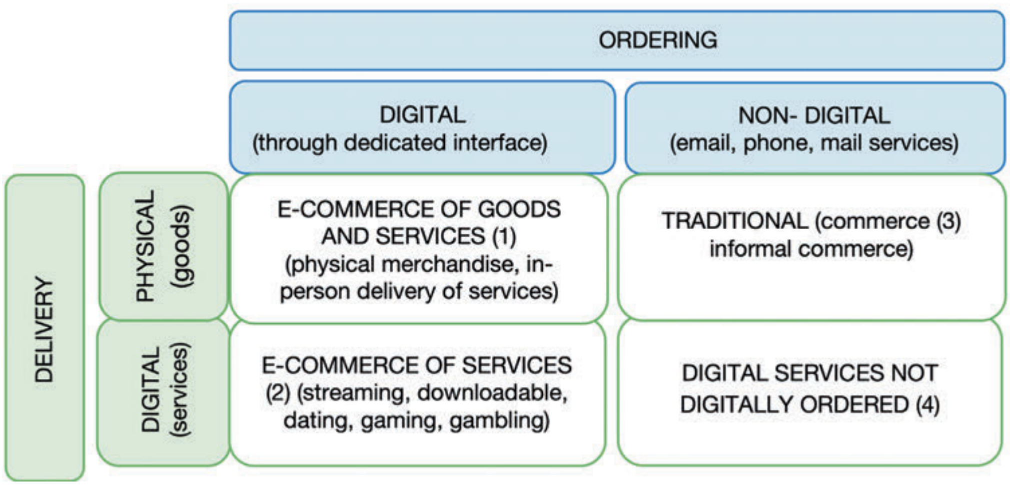
> Cross-border e-commerce in services confronts tax administrations with new and complex situations

Digitally ordered goods must physically cross the border when being imported to the buyer's country. As with all merchandise trade, this gives an opportunity for the application of revenue-raising measures at customs.

As well as affecting how orders are placed and received, digitalization is enabling a wide range of services to be supplied remotely into homes and workplaces by providers from around the world. This digitally delivered trade consists of *"all international trade transactions that are delivered remotely through computer networks."* This includes trade in services that are digital in nature, such as streaming music and video services, cloud services and online software applications. Services delivered through inter-personal interactions taking place online (such as in telemedicine, e-learning), and those where in-person interactions have been replaced by online interfaces (such as in online banking) are also covered. The delivery of services outputs such as architectural designs, research and consultancy reports, and accounting services in the form of digital files also counts toward digitally delivered trade. Because these services enter the economy "invisibly" via the Internet, they pose critical challenges for the application of indirect taxes.

Figure 4 brings together these two facets – digital vs physical ordering and digital vs physical delivery – to provide an overview of the transactions that are scrutinized in this report.

Figure 4
Categorization of the forms of commerce



Categories (1) and (2) cover most e-commerce transactions, namely physical items and in-person delivered services (1) and digitally delivered services (2) ordered online through interfaces specifically designed for the purposes of placing and receiving orders.

- Goods are physical, produced objects over which ownership rights can be established and transferred (SNA 2008, p. 623). By contrast, services are outputs produced to order and which cannot be traded separately from their production. Services are not separate entities over which ownership rights can be established (SNA 2008, paras 6.8-6.9).

- Both the production of, and international trade in, services differ from production and trade related to goods. International trade in goods is conducted separately from production. For example, goods may be produced in one economy and subsequently delivered to residents, who may or may not be known when production occurs, of another economy. In contrast, the production of a service is linked to an arrangement made between a particular producer in one economy and a particular consumer or group of consumers in another, prior to the time this production occurs (OECD 2008, Glossary of Statistical Terms, citing BPM6 para 185).
- Importantly, although the production and supply of some services, such as haircuts, surgical acts, and logistics and delivery, necessarily involve physical delivery, an increasing range of services can be delivered digitally. Such digitally delivered services are the subject of category (2) and (4).
- Goods and services are ordered from a dedicated interface. Ordering can be made through marketplaces or web merchant sites, or any other digital method specifically designed for the purpose of placing and receiving orders.
- They may be delivered either physically or digitally. Goods are imported physically while many services (especially B2C) can be digitally delivered (books, movies, music, gaming).
- Goods and services are closely related. A recent trend fostered by the digitalization of the economy is its "servitization." This consists of adding services to goods and even replacing goods by services. Digital servitization, which corresponds to a combined move from physical products to digital services, concerns all industrial sectors. Gebauer et al. (2021) provides several examples of companies (e.g., Siemens, General Electric, Intel…) engaged in this transformation.
- They can be supplied by a resident (domestic transaction) or non-resident seller (cross-border transaction).
- These e-commerce transactions most often occur through B2B or B2C.

Categories (3) and (4) are not e-commerce according to the OECD definitions as they are not digitally ordered.

Category (3) concerns goods from traditional commerce. This includes orders directly from brick-and-mortar premises, as well as orders placed by phone, fax, manually typed messages, electronic messaging services and non-dedicated interfaces, meaning the ordering has not been validated through automated interface.

While not covered by the OECD's definition of e-commerce, it should be noted that in many developing countries, the use of social media and various mobile services is common to enable commercial transactions.[10]

Commercial transactions performed through electronic messaging services or social media often rely on information (pictures, price…) exchanged without any dedicated interface or automated validation of the transaction. They mostly correspond to informal transactions, similarly to informal transactions "in the real world" operated in the street. These informal transactions correspond to the following potential situations: (1) subsistence transactions, or small sellers under the threshold requesting to register to VAT/GST: then no indirect taxation is missed on these operators; (2) sellers who fail to comply by refusing to register while beyond the legal threshold. In the latter case the problem is not about the taxation scheme but about its enforcement.

[10] UNCTAD, through its eTrade readiness assessments and Pacific Digital Economy Report 2022, document how social media are used by businesses of developing countries to sell online.

It is difficult to measure the order of magnitude of such transactions due to a lack of data on the informal economy, that escape any form of (automated) registration or declaration. But given the general structure of informal operators, it could be a significant number of transactions, normally of low value, reflecting a high cost for the administration for a small reward.

Category (4) concerns services that are digitally delivered but not digitally ordered through a dedicated interface, and as such not considered as e-commerce transactions as previously discussed. When crossing borders, they are however part of digital trade. Some digitally delivered services are increasingly part of aggressive strategies of firms to reduce their tax payments. This may involve declaring digital services as provided from headquarters or subsidiaries located out of the country, often in tax havens with limited taxation schemes, to a subsidiary operating within the considered country that suffers from the tax evasion. These services may be reported as digital marketing services, advisory, intellectual property, maintenance or after sale contracts. Attention should be paid to this category as it represents a major concern regarding potential losses of revenues through a limited number of transactions. The indirect taxation of these services is delicate and depends on how countries manage to protect their direct and indirect tax bases, beyond e-commerce.

Digitalization has meant that local presence for firms is sometimes no longer necessary to extract value from a given market. Digital transformation concerns all the economic sectors. Examples of digital services include digital storefronts and the Internet of Things (IoT). IoT corresponds to an environment where smart connected devices operate. In the context of manufacturing, equipment is able to coordinate with other equipment to improve production efficiency. The automation of processes generates data that require software, machine learning or artificial intelligence for their analysis. These data may be stored remotely in data centers anywhere in the world.

Digital Intermediation Platforms play a particularly important role as “focal points” in the e-commerce ecosystem (see Figure 5). Defined as “Online interfaces that facilitate, for a fee, the direct interaction between multiple buyers and multiple sellers, without the platform taking economic ownership of the goods or rendering the services that are being sold (intermediated)” (IMF, OECD, UNCTAD, and WTO, 2023), facilitate sellers’ access to the online marketplace by providing features to list products for sale, take orders, receive payments, and in some cases to deliver services digitally via the platform.

Figure 5
Examples of Digital Intermediation Platforms (DIPs)

Source: UNCTAD

Because of their role in facilitating large volumes of transactions between numerous online buyers and sellers, DIPs have the potential to be crucial partners in the implementation of tax policies for the digital age.

3. E-commerce, digital trade and taxation challenges

This emerging business landscape carries significant implications for both direct and indirect taxation. Direct taxation is payable and paid by the same entity (household, firm). Examples include income and profit taxation. Indirect taxes are legally payable by a physical or moral person (usually, the consumer) and collected and paid by another person (usually, a firm). Examples include customs duties, excise taxes, sales taxes, goods and services tax (GST) and value added tax (VAT).

E-commerce brings forth new tax challenges and opportunities. Understanding how to adapt existing taxation rules, particularly indirect taxation, is crucial to ensure effective tax collection and prevent revenue erosion. Due to declining tariff rates around the globe due to trade liberalization, customs revenues account for a declining share of government revenues. Meanwhile, digitalization has led to more products being delivered electronically, with trade in digitally delivered services showing the highest growth rate of all kinds of trade. Value added tax (VAT), which is based on domestic consumption, is increasingly becoming an important source of tax revenue also in developing countries.

Understanding how to adapt existing taxation rules is crucial to ensure effective tax collection and prevent revenue erosion

E-commerce furthermore raises concerns regarding fairness in the tax treatment of different kinds of companies. It is imperative that the tax burden is equitable between e-commerce and traditional brick-and-mortar sellers, as well as between resident and non-resident sellers. In other words, fairness should be maintained in both domestic and cross-border transactions.

Virtual transactions between an infinite number of actors raise recording and traceability issues for tax control and audit. Third-party online marketplaces connect multiple buyers with multiple sellers, leading to a potentially very high number of bilateral remote transactions through a digital platform.[11] This can complicate the assessment of tax liabilities and collection mechanisms since they may hinder the detection by tax administrations of taxable events and result in lost tax revenues (see Annex, Mawzo Tax Policy Research Centre).[12]

E-commerce can also raise issues related to the identification of (encrypted) transactions performed electronically, to determine where a product is produced or consumed, to distinguish between types of services, to identify transactions between consumers and overseas suppliers, and to collect the tax from millions of end-users rather than a small number of intermediaries. Cross-border e-commerce may also involve digitally delivered services, confronting tax administrations with new situations regarding remote taxpayers domiciled beyond the country's borders, without a permanent establishment (PE).[13]

Doing business through digital platforms therefore requires regulatory adaptation. Existing tax systems are often not adapted to deal with e-commerce and digital trade. Fiscally controlling and auditing online transactions are particularly challenging, especially when there is uncertainty concerning the nexus, or multiple nexuses, between jurisdiction, potential taxpayers and businesses. When parties in more than one country are involved in a transaction, the risk of non-taxation or double taxation increases (Kabwe and Van Zyl, 2021). Therefore, many governments need to create more enabling environments and strengthen the enforcement of the regulatory frameworks.

The distinction between direct and indirect taxes may sometimes appear ambiguous or artificial, as illustrated by the following collection mechanisms or policy options:

- Reverse charge for VAT. The VAT reverse charge mechanism consists in shifting the payment of VAT from the supplier to the customer for B2B transactions, hence making the indirect taxation a direct one. This critical procedure for the indirect taxation of e-commerce is further discussed later in the text.
- Many developing countries, especially in Africa, have a minimum tax on turnover at a low rate, varying from 0.5 to 2.5 per cent, making it similar to a sales (indirect) tax.
- More broadly, indirect taxes may represent the unique and second-best way to tax profits of digital firms. The Digital Services Tax introduced in the United Kingdom, France and Italy in 2020 took the form of a 2 to 3-per cent

[11] Digital platform and online marketplaces will be used synonymously in the report. For a definition of online platforms, see OECD (2019): https://www.oecd.org/innovation/an-introduction-to-online-plat- forms-and-their-role-in-the-digital-transformation-53e5f593-en.htm

[12] It should be noted that many e-commerce transactions also take place though a seller's own website or app rather than through third-party online platforms intermediating transactions between multiple buyers and sellers.

[13] The notion of permanent establishment is one of the most important issues in international tax law. The permanent establishment concept determines both the tax jurisdiction (or "right to tax") and the tax base for business profits of a non-resident enterprise.

tax on turnover.[14] A similar reasoning applies to transient occupancy tax as an alternative to taxing directly the profit of digital platforms such as Airbnb, Booking or Vrbo (Fuchi, 2024).

- Finally, some developing countries collect advance payment for income (direct) tax at the border on non-registered importers.

Consumption taxes, including VAT are considered to offer increased capacity for revenue mobilization, along with their perceived efficiency and neutrality. They are less distortive than capital and income taxes, as they do not affect decisions to work or invest (Nguyen et al, 2021). The potential simplicity of enacting a VAT may create additional opportunities to generate tax revenue, especially when considering the pre-existing legal structures for VAT. This can make VAT a useful option for generating tax revenue in the digital economy, potentially enabling similar taxation treatment of both domestic and international sellers.

In the next section, particular attention is given the indirect taxation, and especially the use of VAT.

> VAT can be a useful option for generating tax revenue in the digital economy, treating domestic and international sellers equally

[14] These taxes generate controversies since they are deemed to target large U.S. multinational companies. The OECD Pillar 1 of GLOBE aims replacing these unilateral initiatives and coordinating an effective taxation of these firms by establishing new nexus and profit allocation rules for large multinational enterprises.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B. Indirect taxation of e-commerce in developing countries: opportunities and challenges

VAT is a major revenue source for over 170 countries, contributing over 30 per cent of total tax revenue and about a fifth of global tax revenues. It's particularly important for developing countries, accounting for 4 per cent of GDP and over 7 per cent in developed economies. The efficiency and perceived neutrality of VAT have led to its widespread adoption. VAT is crucial for domestic revenue mobilization in developing countries, essential for financing sustainable development goals as tariff revenues decline. However, indirect tax revenues remain low due to limited resources and high informality. Developing countries face challenges in balancing VAT thresholds to meet revenue goals while protecting consumers and considering domestic economic realities. Effective VAT implementation is needed to support development, governance, and public finances. Developing countries should optimize VAT thresholds and ensure clarity and enforcement to manage cross-border e-commerce, formalize businesses, and balance revenue collection with administrative costs.

1. Why VAT is increasingly important

Value added tax is the most important indirect tax in terms of scope, collected revenue and spread in the world. Almost all countries levy a general consumption tax. In 2023, 174 countries operated a VAT or GST system, and a growing number of jurisdictions have adapted or are considering adapting their VAT administration to the challenges of digitalization (IMF, OECD, UNCTAD and World Bank 2023). As of July 2024, 101 countries had enacted legislation on indirect taxes on transactions in the digital economy, and another 15 countries were in the process of introducing such taxes (KPMG, 2024).

Value added tax is neutral and self-enforcing. The neutrality of VAT means that it does not favour any industrial organization or economic sector. By contrast, sales taxes involve a cascading effect that increases the total production cost of fragmented sectors and favour vertically integrated firms. From a neutrality perspective, the VAT base should be as comprehensive as possible. VAT is also self-enforcing. The final consumer ultimately pays the VAT. While, by the successive deductions on VAT paid on their inputs, the firms along the supply chain provide information on the turnover of each supplier up to the final consumer. The main weakness of VAT is the risk of fraud at the last stage (B2C) and more generally for any transaction that involves a non-registered buyer/seller making a breach in the cascade sequence (informal operators, non-registered MSME, households).

> 101 countries have enacted indirect tax laws on transactions in the digital economy, with 15 more in progress

The assumed VAT regressivity makes its administration more complex than for a sales tax. Equity concerns induce a quite complex VAT that is costlier to administer and increases the risk of tax frauds. Indirect taxation in general and VAT in particular are so-called “in rem” taxes,[15] collected at the firm level without any consideration to individual characteristics, such as income or ability-to-pay, making VAT considered a regressive tax. As the propensity to consume (the ratio of consumption to income) is higher for poorer households, the VAT burden falls relatively more heavily on poorer households. This social fairness consideration explains the design and implementation of multiple VAT reduced rates and of the exemptions of several goods or services to protect the households with the lowest incomes. For instance, foodstuff, education and healthcare are VAT exempted in many developing countries.

This does not mean that reduced VAT rates and exemptions systematically benefit the poorest households in developing countries. First, reduced rates may not fully translate into lower consumer prices but into higher profits for retailers or manufacturers. Second, poor households in developing countries are often either mainly self-sufficient for their consumption (as small farmers) or they make purchases informally (Bachas et al., 2023). An alternative policy to VAT with multiple rates and exemptions is to set a unique VAT rate with a large base and complement it by a cash transfer program to address poverty (Warwick et al., 2022). This requires, however, sufficient capacity to implement cash transfer targeting the poorest households (Thiel, 2020).[16]

A VAT follows the “destination principle,” which means that goods and services are taxed in the country of destination or consumption, not in the country of origin or production. The same principle can be applied in the context of e-commerce. In the United States, for example, as the COVID-19 pandemic boosted online shopping, many states observed significantly increased sales tax revenue. Some sales tax revenue also shifted from large urban retail centres to small rural jurisdiction where consumers reside (to the destination) (Agrawal and Shybalkina, 2023).

The destination principle suggests that exports should be zero rated and imports should be taxed, resulting in exporters being mostly VAT creditors (Ebrill et al., 2001, Cnossen, 2019). This raises a second issue of VAT in developing countries: the failure of VAT credit refund mechanisms. Since the VAT rate on exportation is zero (which is different from an exemption as exporters are still declaring zero-rated sales), VAT liable exporters have the right to deduct the VAT paid on their inputs. They henceforth accumulate VAT credits on their local purchases and importations since they do not collect any VAT on their sales abroad. These credits should be reimbursed to guarantee the functioning of the VAT according to its rationale. Unfortunately, developing countries often struggle to reimburse VAT credits. They usually deal with this issue by providing VAT exemptions to the main exporting firms. This solution narrows the VAT base and excludes large firms from the VAT network. Moreover, it favours importation over local purchase when local suppliers are VAT liable and cannot collect VAT on their exempted customer. Therefore, local suppliers have to reduce their margin or increase their price (or both) to pass VAT paid on their inputs. The VAT exempted (exporting) firm will prefer to import rather than to buy locally. VAT credit reimbursement has also been evidenced as an important source of VAT fraud.

VAT registration thresholds define the size (in terms of turnover) over which firms are liable to pay VAT. Below the threshold, firms do not collect VAT on their sales and

[15] An *in rem* tax is a tax on goods or services while an *in personam* tax is a tax on individual income such as personal income tax.

[16] Thiel (2020) analyses the cultural difficulties and institutional negotiations for the national adoption of individual biometric card.

are therefore not allowed to deduct VAT on their inputs purchased. The threshold varies significantly across countries, from 0 to more than US$ 328,000 in Indonesia (See Table 1). A low threshold may reduce the VAT efficiency. There can be a trade-off between potential revenue collected and the collection costs involved (Ebrill et al., 2001). From the perspective of maximizing revenue collection and minimizing distortions in the market, the optimal VAT threshold would be zero. However, such a low threshold will involve significant administrative costs associated with the collection of the taxes. Many countries therefore apply a positive threshold to reduce collection costs and secure tax revenue. Weak capacity of tax administrations may favor the use of a higher threshold, which in turn will imply a larger sector of VAT-exempted firms.

The VAT threshold may in some countries be considered an approximation to distinguish between formal and informal businesses i.e., between registered and non-registered companies. VAT is then a powerful instrument to tax informal firms through backward linkages and imports (Keen, 2008): formal firms registered for VAT charge VAT on their sales while informal firms pay VAT on their inputs sold by formal firms that they cannot deduct later. This VAT payment can be seen as a tax on the informal sector similar to imports from informal firms paying VAT that cannot be deducted. Such mechanisms also provide an incentive for informal enterprises to formalize and to register for VAT.

In this context, it is important to foster increased coherence among country approaches to reducing compliance costs and improving the effectiveness and quality of the compliance processes. Coherent and clear approaches can improve the ease of doing business. For tax and customs authorities, consistency is likely to support effective international cooperation among tax administrations and better enforcement.

2. Indirect taxation opportunities and challenges in developing countries

In 2015, the third International Conference on Financing for Development in Addis Ababa established that domestic revenue mobilization (DRM) would be the main financing instrument for the Sustainable Development Goals (SDGs). This objective was set following the observation that tax revenue to GDP remained relatively low in developing countries.

Domestic revenue mobilization is also a response to the effects of trade liberalization, which has involved a significant decrease in tariff rates. The induced government revenue losses are hard to replace for developing countries by domestic tax revenue in a context of limited taxable base. The adoption of VAT and other indirect taxes have become a key instrument to compensate for revenue losses in developing countries. In developed countries, VAT has largely replaced sales taxes. In developing countries, VAT adoption is part of the tax transition from revenue collection at the border to DRM. However, Arezki et al. (2021) emphasize that "tax transition," that is, the rebalancing away from tariff revenues and taxes collected at the border towards domestic ones comprising direct and indirect taxes but dominated by VAT, remains incomplete in most developing countries.

The rise of e-commerce and digital trade may challenge DRM in developing countries, especially with regard to indirect taxation. Imports via e-commerce may reduce the tax base and tax revenues unless sales by foreign sellers are covered. If foreign sellers in B2C e-commerce lack a permanent establishment in the country of the consumer, they are difficult to tax directly and indirectly. This is especially the case if appropriate national legislation has not been adopted in the destination country.

> Developing countries struggle with tax collection due to limited resources

Equitable taxation can drive social change and support effective governance

Table 1 provides an overview of indirect tax revenue, VAT liability thresholds and rates in selected developing countries and for different years. For the countries included, the ratio of tax revenue to GDP was on average 16.6 per cent. Low levels are observed in Somalia (3.2 per cent), Myanmar (7 per cent) and Nigeria (7.9 per cent). By comparison, in OECD countries the average ratio was 34 per cent in 2022.[17]

Country-specific estimates for VAT on digital products suggest that revenue gains are expected to grow gradually over time. A recent overview of experiences in different countries regarding VAT reforms aimed at digital transactions indicates that, in the short run, annual revenue increases in developing economies range from approximately 0.03 per cent of GDP (such as in Chile and South Africa) to around 0.08 per cent (as seen in Thailand) (Hanappi et al., 2023). Nevertheless, these initial revenue gains are projected to expand over time due to indirect effects on compliance. This occurs as more information can be collected by expanding the reporting obligations of digital platforms (OECD–WBG–ATAF 2023) and by investing in administrative capacity to enhance the capture of digitized transactions and improve both coverage and compliance. Ultimately, beyond the immediate fiscal gains, an investment in a well-functioning VAT system may yield long-term benefits in terms of efficiently increasing tax revenue.

However, progress remains uneven and revenue improvements have thus far failed to materialize for many developing countries. The effective collection of taxes often remains weak, and the adoption and deployment of new technologies have been uneven. Additional explanations refer to narrow tax bases due to aggressive tax planning from multinational enterprises and multiple tax exemptions especially for indirect taxes (IMF, 2011, Benitez et al., 2023). Low levels of tax revenue in many developing countries have been attributed to limited human, technological, and financial resources of tax administrations, as well as high levels of informality in the economy (Besley and Persson, 2014).

Taxation is both a financing and a development matter. Equitable, fair and neutral taxation can be a driver for wider social and economic change. Taxation serves not only as a means to generate revenue and create the financial capacity necessary to support public policies, but also plays a vital role in laying the foundation for effective governance. Tax policy and tax administration reforms to secure fair and efficiently managed tax systems are essential to ensure the sustainability of public finances.

[17] See https://www.oecd.org/tax/tax-policy/revenue-statistics-highlights-brochure.pdf.

Table 1
Indirect tax revenue in selected developing countries, VAT liability thresholds and rates, various years

	Regional Trade Agreement	Year	Tax revenue to GDP (%)	Indirect tax (%)	VAT (%)	Excises (%)	Tariff Duties (%)	VAT liability threshold in local currency	in $	Standard VAT rate (%)	Reduced VAT rates (%)
Armenia	CIS	2020	25.5	12.9	7.5	2	1.1	AMD 115 million	**232 394**	**20**	**0**
Bolivia	CELAC	2020	25.2	12.7	6			no		**Nominal: 13 Effective: 14.94**	**0**
Burkina Faso	ECOWAS	2019	17.7	10.4	5.7	1.5	1.9	FCFA 50 million	**83 334**	**18**	**0**
Cambodia	ASEAN	2020	20.2				2.1	no		**10**	**0**
Cameroon	CEMAC	2019	12.8	6.8	4.9	1.6	1.8	FCFA 50 million	**83 334**	**19.25**	**0**
Chad	CEMAC	2019	11.6	4	1.5	0.5	1.4	FCFA 50 million	**83 334**	**18**	**0, 5**
China (People's Rep.)		2020	16.3	10.3	5.6	1.7	0.3	no			
Congo (Dem. Rep.)	SADC	2019	8.3	3.4	1.7	0.6	0.8	CDF 80 million	**41 199**	**16**	**0**
Congo (Rep.)	CEMAC	2019	26.3	5.6	2.2	0.3	1.4	FCFA 60 million	**100 000**	**18**	**0, 5**
Cote d'Ivoire	ECOWAS	2019	12.5	8.2	2.8	1.1	3.2	FCFA 25 million for the supply of services; FCFA 50 million for the supply of goods	**41 667 83 334**	**18**	**9**
Dominican Republic	CELAC	2020	12.5	8	4.4	1.9	0.7	VAT registration included in the general registration as a taxpayer		**18**	**16, 0**
Egypt	MENAP	2020	14.4	7.9			0.6	EGP 500,000	**31 086**	**14**	**0, 5**
El Salvador	CELAC	2020	18.9	11	8.4	1.8	0.8	no		**13**	**0**
Equatorial Guinea	CEMAC	2019	18.2	1.6	0.9	0.3	0.3	no			
Ethiopia		2017	14.1	7			3.6	ETB 1,000,000	**28 581**	**15**	**0**
Georgia		2020	22.3	12.8	9.2	3.3	0.2	GEL 100,000	**32 705**	**18**	**0**
Honduras	CELAC	2020	15.1	10.8			0.6	no		**15**	**0**
India		2016	20.6	11.5		1.8	1.7	INR 40 million	**52 800**	**12, 18**	**0, 5**
Indonesia	ASEAN	2020	9.5	5.7	2.9	1.1	0.2	IDR 600 million	**328 289**	**10**	**0**
Jamaica	CELAC	2020	26.2	16.4	8.8	3.5	2	JMD 3 million	**21 146**	**16, 5**	**10, 0**
Kazakhstan	CIS	2020	14		0.00			30,000 times the monthly calculation index	**211 000**		
Kenya		2019	16.3	8.4	3.9	2.4	1.5	KES 5 million	**47 455**	**14**	**8, 0**

	Regional Trade Agreement	Year	Tax revenue to GDP (%)	Indirect tax (%)	VAT (%)	Excises (%)	Tariff Duties (%)	VAT liability threshold in local currency	in $	Standard VAT rate (%)	Reduced VAT rates (%)
Kyrgyzstan	CIS	2020	17.4	16.6	6.6		2.9	KGS 8 million	**106 698**	**12**	**0**
Madagascar	SADC	2019	11.3	8.1	5.5	0.8	1.7	MGA 200 million	**55 014**	**20**	**0**
Malawi		2019	12.4	6.4	3.5	1.8	1.1	MWK 10 million	**13 307**	**16.5**	**0**
Mali	ECOWAS	2019	16.2	11	5.3	1.2	2.2	FCFA 50 million	**83 334**	**18**	**5, 0**
Mauritania		2019	18.1	8.6	4.4	0	3.5	MRU 3 million	**79 000**	**16**	**0**
Mexico	CELAC	2020	19.9	15	9.9	3.2	0.9	no		**16**	**8, 0**
Moldova	CIS	2020	21.2	9.9	5.9	2.1	2	MDL 1.2 million	**65 754**	**20**	**8, 0**
Mongolia		2020	32.1	23.9	16.6	5.6	0.7	MNT 50 million	**14 390**	**10**	
Morocco	MENAP	2019	26.4	12.9	7.4	2.6	0.8	MAD 2 million (for wholesalers and retailers)	**210 579**	**20**	**0, 7, 10, 14**
Myanmar	ASEAN	2020	7	4.8			0.5	no			
Nicaragua	CELAC	2020	18.7	11	5.8	3.3	0.5	no		**15**	**0, 7**
Niger	ECOWAS	2019	10.7	7.4	3.6	0.5	1.7	FCFA 50 million	**83 334**	**19**	**0, 5, 10**
Nigeria	ECOWAS	2020	7.9	1.4	0.8	0	0.6	NGN 25 million	**71 327**	**7.5**	**0**
Pakistan	MENAP	2020	10	6.8		0.5	1.3	PKR 1.2 million	**7 558**	**17, 16, 15, 13**	**7.5, 0**
Peru	CELAC	2020	13.3	7.7	5.3	1	0.2	no		**18**	**0**
Philippines	ASEAN	2020	15.1	9.3				PHP 3 million	**60 241**	**12**	**5, 0**
Rwanda		2020	15.1	8.4	5	2.2	1.2	RWF 20 million	**21 080**	**18**	**0**
Senegal	ECOWAS	2020	17.5	12.1	5.7	1.8	2.4	no		**18**	**0, 10**
Somalia		2020	3.2	2.9	0	0	2			**10**	**0**
South Africa	SADC	2020	25.1	10.4	6	2	0.8	ZAR 1 million	**58 480**	**18**	**no**
Tajikistan	CIS	2020		11.6			0.8	TJS 1,000,000	**96 711**	**18**	**5**
Thailand	ASEAN	2020	15.7	9.9	3.5	4.1	0.5	THB 1.8 million	**58 817**	**7**	**0**
Togo	ECOWAS	2019	16.8	11.6	6.3	0.9	3.3	FCFA 60 million	**100 000**	**18**	**no**
Uzbekistan	CIS	2020	19.4	11.2	6.7	2.1	0.4	UZS 1 billion	**99 917**	**20**	**0**
Vietnam	ASEAN	2020	15	9.6	4.7		1.4	no		**10**	**0, 5**
Average			**16.6**	**9.4**	**5.1**	**1.7**	**1.4**		**83 194**	**14.4**	

Source: UNCTAD.

3. Indirect taxation beyond VAT

In most countries, some goods and services are not taxed under VAT, but under special (indirect) taxes. This is the case for gambling, insurance, banking, rental activity and sales of real estate. These activities are considered difficult to tax under VAT. Online gambling and lotteries are essentially B2C activities and typically taxed under a particular excise duty or equivalent. Box 2 describes the specific case of gambling, which is a major concern regarding the possibility of money laundering. Similarly, banking and insurance are often subject to special taxes e.g., in the form of a turnover or sales tax. Other areas, such as education or healthcare, are sometimes exempted from taxes.

Box 2
The case of online gambling and lotteries

Indirect taxation of online gambling may raise significant revenue on a growing market especially in developing countries. The global market reached a total of US$ 55 billion in 2023, and over the past three years, it has shown an average growth rate of nearly 50 per cent, reaching a maximum of 170 per cent in the United States.

In the United Kingdom, annual turnover of online gambling was US$ 9.1 billion in 2023. Since 2014, that country has imposed a 15 per cent Remote Gaming Duty on the gross profits generated from UK customers, irrespective of the operators' geographical locations. These operators are required to register for operation and verify the tax residency of their customers in the UK.

As of October 2023, India has opted for a flat tax rate of 28 per cent on turnover for online gambling, casino activities, and horse race betting.

In Brazil, Bill No. 3,626/2023 regulates virtual betting, physical betting, real sports-themed events, online gaming and virtual online gaming. The Bill establishes a 12 per cent tax rate on gross proceeds earned by sportsbooks and iGaming operators, whilst bettors will see their net winnings taxed at 15 per cent.

Nevertheless, the regulatory landscape and taxation policies for online gambling largely remain uncertain or are absent in many jurisdictions.

Online gambling, being susceptible to money laundering, presents a convenient avenue for illicit activities. For instance, a common tactic involves converting illegitimate funds into electronic balances in online casinos, engaging in minimal gambling, and subsequently withdrawing the funds in cash. Taxation plays a role in curbing such practices by facilitating the automatic recording of customer activities. In a broader context, digital taxation can contribute to minimizing illicit financial outflows from developing countries.

Source: UNCTAD

4. Cross-border specific rules: moratorium on electronic transmissions and de minimis rules on imports

a. The WTO Moratorium on Electronic Transmissions[18]

The Moratorium on Electronic Transmission (ET) exempts digital services from customs duties. In 1998, members of the World Trade Organization (WTO) adopted a two-year Moratorium stating that "Members will continue their current practice of not imposing customs duties on electronic transmissions." At the end of 2023, 88 Regional Trade Agreements (RTAs), involving a total of 87 economies, with 33 classified as developing economies, had incorporated further commitments to refrain from imposing customs duties on electronic transmissions (IMF, OECD, UN, WB, WTO, 2023).

At the 13th WTO Ministerial Conference (MC13), WTO members agreed to further extend the Moratorium of customs duties on e-commerce until the next Ministerial Conference ("MC14") or 31 March 2026, whichever is earlier.[19] The renewal of the moratorium also encompassed a call to revitalize the 1998 Work Programme on E-commerce over the next two years. The ministerial decision explicitly urges Members to "hold further discussions and examine additional empirical evidence on the scope, definition, and the impact that a moratorium on customs duties on electronic transmissions might have on development, and how to level the playing field for developing and least-developed country Members to advance their digital industrialization."

Proponents of the moratorium emphasize that the commitment has supported a stable and predictable environment for digital trade to thrive. Meanwhile, other WTO members have expressed concerns about the lack of clarity regarding the scope of the moratorium and the definition of electronic transmissions as well as the opportunity costs of the moratorium. These include the potential foregone customs revenue and the desire to maintain policy space in light of the uncertainty associated with rapid technological change. They have also expressed concerns about the impact of the moratorium on their ability to use customs duties for industrial policy purposes (IMF, OECD, UN, WB, WTO, 2023).

The impact of the moratorium on government revenue has been estimated to be below 0.33 per cent of overall government revenue on average. The moratorium can impact the amount of customs revenue collected by governments. Uncertainties exist about its scope and the definition of electronic transmissions, but existing estimates of the potential revenue that could be collected using tariffs on electronic transmissions vary between 0.01 per cent and 0.33 per cent of overall government revenue on average for developing economies, with higher losses for a handful of economies.

While tariffs and VAT are not mutually exclusive, recent evidence shows that for most economies, VAT could generate higher revenue from taxing electronic transmissions with appropriate investment in the capacity of tax administrations. Tariffs on electronic transmissions might also impact competitiveness and participation of firms in trade (IMF, OECD, UN, WB, WTO, 2023).

Beyond the issue of the Moratorium and related tariff revenue losses, there is a debate regarding the correct classification of some digital content as a good or a service. For example, should music or software on compact discs be considered as a good per se or as a service? There

[18] See the Joint Report on Digital Trade for Development by the IMF, OECD, UNCTAD, World Bank and WTO available at: https://unctad.org/system/files/official-document/dtd2023_e.pdf.
[19] https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN24/DEC.pdf&Open=True.

is still no consensus among WTO members whether digitized products should fall under the General Agreement on Tariffs and Trade (GATT) or the General Agreement on Trade in Services (GATS) (IMF, OECD, UN, WB, WTO, 2023).

b. The de minimis rule on imports of goods

The *de minimis* threshold defines the value above which duties and taxes, including custom duties and VAT/GST, are to be collected on imported goods, which may be the result of the increasing number of orders placed online. The initial purpose of such thresholds was to help governments and revenue authorities to concentrate their efforts and resources on the indirect tax base that yield the highest revenues.

The World Customs Organization (WCO) *Immediate Release Guidelines* of 2018 defines the *de minimis* threshold as the minimum value of a good and/or minimum amount of duties and taxes, established by national legislation, below which no duties and taxes will be collected. With this, other compliance considerations or charges such as VAT, environmental taxes, national health taxes, among others, which are often levied on imports as well as on domestic commerce, will need further consideration.

The WTO Trade Facilitation Agreement (TFA) article 7.8.2(d), on expedited shipment, takes the definition further by stipulating that "members shall, to the extent possible, provide for a *de minimis* shipment value or dutiable amount [… while preserving] the right to examine, detain, seize, confiscate or refuse entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems." The TFA further asserts that internal taxes, such as VAT and excise taxes, applied to imports consistently with Article III of the GATT 1994, are not subject to this provision. This leaves policy space for countries to decide which tax categories, charges and fees, as well as compliance procedures for which a *de minimis* threshold is defined (see Box 3).

A number of business groups have argued for various amounts as ideal for a global *de minimis* threshold. The International Chamber of Commerce, for example, recommends a global *de minimis* threshold of US$ 1,000 and no less than US$ 200 to be applied to the value of goods. Given the heterogenous nature of economic structures and revenue drivers in different countries, however countries and customs unions need to individually examine and determine *de minimis* thresholds that are most suitable.

> De minimis thresholds vary widely, reflecting each country's policy priorities

The WCO Cross-Border E-commerce Framework of Standards argues that when reviewing and/or adjusting *de minimis* thresholds for duties and/or taxes, governments should make fully informed decisions based on specific national circumstances. While some countries may need to raise or reduce current *de minimis* thresholds, others may need to take a different approach to the application, implementation and enforcement of existing thresholds. For example, enforcement and compliance of existing *de minimis* thresholds is still a problem in many developing countries. Simply resetting the threshold would not necessarily address the situation. Instead, governments may need to examine, reform, optimize and enforce the current *de minimis* regimes.

Furthermore, most developing countries have not yet gotten around the multi-faceted and complex nature of taxation related to cross-border e-commerce. Understanding the best point of application, the suitable bearer of tax liability and appropriate means of revenue collection are crucial issues to eventually optimize any tax regime for an e-commerce environment and most importantly for the success of any *de minimis* regime.

Box 3
Country experiences with *de minimis*

Countries have different types, levels and thresholds of *de minimis*. Each country's regime reflects its trade, fiscal and monetary policy priorities. In developed countries, significant variation exists. While some countries implement a single *de minimis* threshold, others implement multiple thresholds for different tax categories. Some countries exclude commercial transactions and apply the *de minimis* threshold only to certain types of transactions.

The growth in e-commerce, both in volume and in number of "low-value" transactions, has transformed the landscape, raising concerns among governments over potential revenue losses and unfair advantages afforded to foreign suppliers. Some jurisdictions have found VAT relief for low-value consignments to be going against VAT neutrality, offering unfair competitive advantages to non-resident sellers (OECD, 2015).

Countries in the EU, for example, which implemented a common *de minimis* regime with a threshold of EUR 150 (US$ 165) for customs duties later implemented another *de minimis* threshold for VAT of EUR 22 (US$ 24). This was primarily aimed at curbing revenue losses caused by e-commerce. Under the existing system, goods imported into the EU valued at less than EUR 22 by non-EU companies were exempt from VAT. This exemption was lifted in 2021, so that VAT is now charged on all goods entering the EU).

In many developing countries, policy discrepancies and implementation gaps remain common. While some developing countries apply *de minimis* for custom duties only, others do not have any *de minimis* at all. With the increasing ubiquity of e-commerce in many emerging regions, optimal *de minimis* regimes will be needed to lessen the negative impact on public revenues. Countries with broad regimes that address multiple tax categories will, in particular, be able to achieve multiple policy goals and be more effective than those with a single or no *de minimis* regime. The trade tax landscape is complex and multifaced, and many developing countries that lack the necessary technical capacity, tend to avoid *de minimis* regimes altogether. A comprehensive regime for all applicable taxes and duties, along with public awareness of these thresholds, can eliminate doubts, ambiguity, discretion and corruption, giving predictability and clarity to the tax environment.

In Africa, many countries do not have a *de minimis* regime or apply very low thresholds. Certain countries, including Benin, Burundi, and Comoros, use informal arrangements 'on the ground' instead of formal regulation.

In Asia and the Pacific, economies generally have *de minimis* regimes, and thresholds range from under US$ 1 to more than US$ 1,000, with varying eligibility. For example, the threshold in Indonesia is US$3, whereas in Australia it is set at AU$ 100.

Across Latin America and the Caribbean, the majority of thresholds fall within the range of US$ 50 to US$ 200. El Salvador, with the second highest threshold of US$ 300, established this value in November 2021, with a view to easing non-commercial online purchases. Meanwhile, certain countries, such as Saint Kitts and Nevis, along with Trinidad and Tobago, lack specific *de minimis* regimes.

Source: UNCTAD.

De minimis will become increasingly important as e-commerce evolves into a more common means of transacting across borders among businesses and consumers. Developing countries should therefore be encouraged to consider various policy mechanisms at their disposal, including *de minimis* to achieve these policy goals.

When considering what *de minimis* approach to adopt, developing countries may keep the following issues in mind:

- The regimes should be sufficiently well defined vis-à-vis all applicable taxes and duties along with public awareness to ultimately ensure predictability and clarity in the trading and tax environment. This could turn *de minimis* into a backstop to preserve government revenue and drive specific policy goals in the prevailing low-tariff trade environment.
- Setting a threshold requires a multifaced, cross-cutting assessment that reflects the needs of all key stakeholders. Considering all relevant factors will make enforcement easier, compliance higher and lead to a more predictable trading environment. This also includes robust and solid economic modelling of the impacts of implementing *de minimis* rules.
- Consider domestic realities, economic outlook, policy objectives and consumer policy regimes. The *de minimis* should be established and implemented as part of a clear understanding of the economic structure and characteristics of each country or REC.
- Developing country governments can use *de minimis* to take advantage of the growing sector of B2B e-commerce to promote exports, but also imports of intermediate goods that allow for further value addition domestically. This will encourage domestic SME participation in global value chains (GVCs). At the same time, countries can use different thresholds for consumer goods, especially those that can be attained locally, to effectively protect small businesses from unfair international competition.
- Economic structures and revenue drivers of countries in customs unions can differ significantly and change over time. This should be reflected when determining a *de minimis* threshold in customs unions and RECs to ensure that it brings net benefits to all members.
- Capacity deficits persist in many developing countries regarding the handling of cross-border e-commerce. This has sometimes turned entry-exit points into chokepoints. Countries need to address these capacity deficiencies by training customs authorities dealing with digitally traded goods, at airports in particular, to ensure the timely processing of parcels arriving by air.
- Implementation of *de minimis* rules and the simplification that such rules provide, will need to be considered in an overall coordinated national risk management context, not only in terms of revenue collection, but also in terms of compliance with other national regulatory priorities, such as health, safety and public moral issues. Thus, simplification of trade through application of *de minimis* provisions can be countered by the need for other control and compliance objectives.

Developing countries could take into consideration six broad approaches in setting *de minimis* thresholds either applied individually or jointly depending on the public revenue goals, policy objectives or consumer welfare targets:

- **Shipment-specific *de minimis* threshold (Means of shipment/ Type of consignment)**

A shipment-specific *de minimis* threshold is set either on the type of shipment or the means of shipment. For example, many countries have a *de minimis* regime that is applicable to only postal shipment and eligibility is based on type of consignment. This is applied with the understanding that the means of shipment is a proxy for the value of the shipment, which can help ease burden of inspection, examination and customs procedures. Though simple, this approach can lead to undervaluation,

Developing countries could take into consideration six broad approaches in setting *de minimis* thresholds

misclassification, misdeclaration and fraud. The size and value of shipment can differ significantly, and a postal shipment can be more valuable than a containerized shipment depending on the content. Hence, countries that choose this approach could complement it with further description that indicates eligibility with clear measures to curb fraud. For example, while Jamaica has a shipment-specific *de minimis* threshold that applies to only personal shipment, the country has further described that some items, such as mobile phones, are ineligible.

- **Tax-specific *de minimis* threshold**

Some countries set *de minimis* for a specific tax category. While most countries have a primary *de minimis* rule for all import duties, a dozen countries also have one or two additional thresholds specifically for VAT or other taxes. As noted above, the EU introduced new VAT rules for B2C transactions in 2021. As a result, all goods imported to the EU will be subject to VAT. The new rules aim to establish fair competition between European and foreign e-commerce market players, as well as between e-commerce and traditional retail shops. They offer businesses a uniform system to declare and pay their VAT obligations from cross-border transactions to buyers in the EU via the new online system: Import One Stop Shop (IOSS), which simplifies the declaration and payment of VAT for online sales of goods imported in the EU with a value not exceeding EUR 15,096.

This type can boost public revenue especially from e-commerce, while the country maintains higher primary *de minimis* thresholds that eliminate burden of revenue collection and avoid retaliatory measures from other trading partners. It may also help to create a level playing field between imports through e-commerce and domestic sales. There are two main reasons why this type of *de minimis* may be worth considering for developing countries.

Developing countries have a multi-pronged policy interest in opening up to the global economy. One is the protection of revenue and consumer welfare, and another is the protection of national trade, infant industries and small traders that provide jobs for the majority of their citizens. Revenues of developing countries can be significantly affected by increased volumes of imported small parcels through e-commerce under *de minimis* regimes. Indeed, many developing country governments lack comprehensive monitoring mechanisms (digital or manual) to verify how many parcels cross their borders.

- **Time or valuation-capped *de minimis* threshold**

Time and duration-based thresholds apply to shipments based on a ceiling placed on the cumulative value of duty-free imports an individual or entity can clear under a specific *de minimis* regime. Beyond that threshold *de minimis* rule no longer applies and normal import duties are payable. It is usually applied together with a primary *de minimis* threshold. For example, as Argentina and Uruguay have a general *de minimis* threshold for custom duties with a caveat that limits the number of shipments or cumulative value of shipment per year, per entity. This can be a public revenue protection safety net, which ensures that *de minimis* regimes are not abused and extreme revenue losses are not incurred. It may, however, be difficult to ensure compliance in countries where identification systems are weak and/or where individuals trade under more than one identity.

- **Country-of-origin specific *de minimis* threshold**

Country-specific *de minimis* refers to setting a specific threshold for certain countries of origin under bilateral, regional or plurilateral trade agreements without violation of international trade law. This is implemented to promote certain policy goals, such as promotion of major exports through reciprocity from countries under a bilateral or plurilateral agreement. It could also be done for citizens' welfare. For example, while the Republic of Korea has a threshold of US$ 110 applicable to a set of products from all markets, the country has an additional *de minimis* threshold of

US$ 146 that only applies to products from the United States and Puerto Rico under the Korea-USA Free Trade Agreement.

- **Product number and/or weight based *de minimis* threshold**

Most countries use gross weight limits for shipments as a benchmark for setting *de minimis* thresholds beyond which general duties apply. While gross weight can in some cases be a good proxy for value, countries understand that this is not always the case, so they apply weight limits as well as product type and number-based ceilings to prevent valuation flaws.

- **Setting a multi-factor/cross-cutting *de minimis* threshold**

Implementing a threshold that meets all stakeholders' needs can be challenging. E-retailers and importers may call for a high *de minimis* to cut down the cost of imports, while local SMEs and domestic retailers may count on the government's use of low *de minimis* to protect local businesses. Governments must take a multi-stakeholder approach to setting and implementing it. This does not mean that a specific *de minimis* is most ideal for all countries. Each country or REC, on its own merits, should consider their domestic realities, economic DNA, policy agenda and consumer welfare before setting a threshold.

C. Indirect taxation of e-commerce: main opportunities, challenges and lessons learned

Countries have adapted their VAT systems to address challenges associated with cross-border e-commerce. Measures include simplified VAT registration for non-resident vendors and using online platforms as VAT collectors for digital services. Digital platforms, which facilitate transactions and data sharing with tax authorities, are increasingly vital for tax collection and risk management. There is no universal approach to involving digital platforms in indirect taxation, with varying country-specific rules for VAT/GST liability on different types of goods and services. Both developed and developing countries have implemented regulations and introduced new technologies to tackle these challenges, emphasizing the need for better compliance enforcement and new monitoring tools. Collecting VAT through marketplaces and digital platforms can also help formalize enterprises in the informal sector, broadening VAT's scope and addressing informal economy issues.

1. Implementation trends related to indirect taxation in the digital economy in developing countries: an overview

a. Africa

Out of the 54 developing countries in Africa, at least 17 have enacted indirect taxation legislation related to the digital economy.

The Kenyan VAT (Digital Marketplace Supply) Regulations, 2020, provide a simplified VAT registration framework for non-resident entities that deliver digital services in Kenya on a B2C basis. Article 13 confirms that failure to collect and remit VAT could result in the denial of access to the digital marketplace. Nigeria's Finance Act enacted in 2020 brings digital services applicable to VAT to digital transactions and realigns the legislative and administrative framework for VAT treatment of cross-border transactions. It is aligned with OECD recommended approaches, with the aim of reducing compliance and administrative burden, while blocking revenue leakage. Uganda has amended its VAT statute to create an obligation for non-resident suppliers of digital services to file quarterly VAT returns (See Annex, Uganda Revenue Authority). In Zambia, the introduction of VAT on electronic services includes the supply of services via the Internet, mobile telecommunication networks and any other e-commerce infrastructure.

> Out of 54 African developing countries, at least 17 have enacted indirect taxation laws on the digital economy

b. Asia and the Pacific

In Asia and the Pacific, VAT has increasingly been introduced on e-commerce transactions for imported goods and

Out of 13 Pacific SIDS, only Fiji and Nauru have introduced taxes on the digital economy

Of 45 developing Asian nations, at least 24 have enacted indirect tax laws on the digital economy

At least 16 of the 35 developing countries in the Americas have enacted digital economy tax laws

services. Out of the 13 Pacific Small Island Developing States (SIDS), two countries, Fiji and Nauru, have introduced taxes related to the digital economy (Mullins, 2022). The Fiji Revenue and Customs Service has published a draft VAT bill, which, if approved, would introduce several changes, including the mandatory registration and VAT collection by non-resident providers of digital services to consumers in Fiji.[20]

Out of the 45 developing countries in the Asian region, at least 24 countries have enacted indirect taxation legislation related to the digital economy. Cambodia has implemented VAT on e-commerce transactions.[21] Viet Nam requires VAT on e-commerce and digital supplies to businesses and consumers for businesses without a permanent establishment.[22] Singapore expanded its GST from 2023 to apply to overseas suppliers of remote B2C services. Singapore is also introducing marketplace GST liability rules for low-value goods that removes the low-value goods exemption threshold. Malaysia extended its tax system to cover foreign supplies of digital services in 2020. Digital service providers are now obligated to collect and remit a 6 per cent VAT on digital services supplied to customers in Malaysia (B2C and B2B). Moreover, in 2023, the country implemented a sales tax on B2C imports of low-value goods (See Annex, Department, Inland Revenue Board of Malaysia). From 1 January 2024, Malaysia imposes a 10 per cent sales tax on all low-value goods (LVG) imported into the country for B2C transactions.

Technological advancements are also being observed. Indonesia has revised its regulations pursuant to Law No.7/2021, which extended the applicability of VAT to crypto asset transactions starting in May 1, 2022. VAT is now imposed on the use of taxable intangible goods and services from outside into the Indonesian customs area through trade using electronic systems. Indonesia has revised its regulations to extend the applicability of VAT to crypto asset transactions from May 2022. VAT is now imposed on e-commerce imports of taxable intangible goods and services in Indonesia.

Short-term revenue gains show modest potential. The Revenue Department of Thailand reported the collection of over THB 5.01 billion (US$ 139,842 million) in tax revenue from foreign platforms and e-service providers between October 2022 to July 2023. Viet Nam's General Department of Taxation reported foreign suppliers paid nearly VND 4.040 billion in taxes through e-commerce platforms in the first half of 2024, marking an 18.5 per cent increase compared to the same period last year. During this period, 26 additional foreign suppliers registered for tax payments through electronic portals. Currently, 102 foreign suppliers from various markets use e-commerce portals for tax filing. The General Department of Taxation in Cambodia reported that throughout 2023, the country generated KHR 305.83 billion (approximately US$ 75.52 million) from online transactions. This total includes KHR 64.96 billion riel (US$ 20.98 million) from non-residents registered under the simplified VAT system, and KHR 220.87 billion (US$ 54.54 million) from residents using the VAT reverse charge method.

c. Latin America and the Caribbean

Out of the 35 developing countries in the Americas region, at least 16 have enacted indirect taxation legislation related to the digital economy. Countries in Latin America and the Caribbean began adapting their VAT rules in the past decade to capture services provided by foreign suppliers (Annacondia and Alarcon, 2021). The Bahamas was the pioneer in 2015, followed by Uruguay, Argentina and Colombia in 2018, Barbados and Costa

[20] Fiji and Nauru have also introduced special taxes on telecommunication companies. These taxes are broader in scope compared to conventional digital service taxes (DSTs) but also encompass certain aspects of digital services.

[21] A VAT of 10 per cent on e-commerce transactions has been in force since April 1, 2023.

[22] See, Circular No. 80/2021/TT-BTC.

Rica in 2019; Chile, Ecuador and Mexico in 2020, and Paraguay in 2021. Other countries such as the Dominican Republic, Panama, Peru, Honduras, and Bolivia are considering reforms to tax digital services.

Tax reforms have focused on creating new taxable events and expanding the scope of taxable persons to non-resident suppliers. Countries are also exploring the adoption of simplified registration and pay-only procedures for non-established taxpayers, as well as defining the role of financial intermediaries in tax collection. Other reforms being examined are those related to the import of low-value goods (as in the case of Chile and Peru) and the role of foreign digital platforms as intermediaries in the provision of local services, such as accommodation or passenger transport. Bolivia, Honduras, Panama and Peru are considering reforms to tax digital services (Annacondia and Alarcon, 2021).

A study of eight Latin American countries estimated that yearly additional revenues from VAT could amount to US$ 55 million in total, which would represent between 0.03 per cent and 0.06 per cent percentage points of national GDP in the selected countries (Jimenez and Podesta, 2021). The areas with the highest revenue potential were digital advertising and audio-visual production, respectively (CIAT, 2021). The estimates of the potential of VAT revenue on digital services are also made in those countries that haven't yet applied this tax to the sector. For example, the study found that the potential collection in terms of GDP would be comparable to that achieved by the Latin American countries that already tax these activities between 0.02 per cent and 0.06 per cent of GDP annually once the tax is fully implemented. Depending on the degree of penetration of the technology, the size of the countries, and the VAT rate, the annual resources that could be obtained in the countries where the tax was not yet collected ranged from US$ 6 million in Nicaragua to US$ 113 million in Peru. Following the introduction of various compliance and registration measures, other countries have also observed increases in VAT revenue (CIAT, 2021).

For some developing countries with smaller markets, establishing and enforcing a simplified registration and compliance regimes can remain challenging, given the difficulty of influencing multinational companies that operate in the digital economy and that lack a physical presence in the jurisdiction (Jorratt, 2020). In these contexts, improving the enforcement of compliance may depend not only on deploying new tools to monitor taxpayers, but also on strengthening rules-based enforcement efforts by tax collectors.

2. Role of marketplaces and digital platforms in tax collection and risk management

Marketplaces are central to e-commerce and can act as tax collectors and data sources for effective revenue management

Given the central role of online marketplaces and digital platforms in domestic and cross-border e-commerce, a growing number of governments have looked at different ways of involving them in collecting taxes and in sharing information with the tax authorities. These platforms connect multiple buyers with multiple sellers virtually, enabling a potentially infinite combination of bilateral transactions. As the central convener of digital transactions, they have privileged access to information that can be highly valuable for the tax authorities. There are also possibilities for the platforms to serve as collectors of taxes and enable better risk management. Whilst this may resemble the role of customs administrations collecting both duties and taxes, the reliance of privately owned market players may raise various data and privacy concerns.

a. Digital platforms as collectors of taxes

There is no consensus among countries on how to engage with digital platforms in the context of indirect taxation. VAT/GST liability may apply to low value imported goods exclusively, any imported goods, goods transiting through marketplaces (including locally produced goods), or imported intangible products only. Each category may be subject to a specific threshold, which may be amended, limited, or exclusive to non-registered VAT vendors. Additionally, the liability may be optional or mandatory.

Various government regulations have been implemented in recent years, in both developed and developing countries using different approaches. Selected examples of such regulations are shown in Table 2 (developed countries) and Table 3 (developing countries).

The OECD guidelines (2019b) describe three options in this context:

- The "full liability regime" makes digital platforms liable to assess, collect and remit VAT/GST on goods and services purchased on them. Its overarching policy objective is to reduce the costs and risks for tax authorities of administering, policing and collecting VAT/GST on the ever-increasing volumes of online sales, by drawing on the relatively limited number of platforms that facilitate large shares of online sales and that are capable of complying with the VAT/GST obligations in respect of these sales.
- Tax authorities may involve a role for digital platforms in facilitating the collection and payment of VAT/GST on online sales, without relieving the underlying supplier from its VAT/GST liability.
- Tax authorities could also consider the imposition of joint and several VAT/GST liability on digital platforms together with the underlying supplier.

The OECD recommends the "full liability regime" where digital platforms operators become the responsible taxpayers for VAT on sales of services and (low value imported) goods made by underlying suppliers that they facilitate.

Table 2
Regulation on the role of digital platforms to collect VAT/GST- developed countries

Australia	Electronic distribution platforms are responsible for collecting GST on sales for Australian consumers, for low value imported goods and or digital/product and services.
Canada	Distribution platform operators are required to charge and collect the GST on the supply of qualifying goods that are sold through the platform by vendors who are not registered for GST. Vendors registered under the GST regime are still required to charge and collect tax on their transactions, even if those sales are made through a distribution platform.
European Union	In 2021, the European Commission implemented changes to VAT regulations for cross-border B2C e-commerce activities, referred to as the VAT e-Commerce Package. This mandated that online marketplaces now have to collect and remit VAT in the EU for B2C sales by non-EU vendors and for the B2C import of low-value goods (optional, depending on whether the seller uses the One Stop Shop (OSS) and the Import One Stop Shop (IOSS) regimes or not).

France	The 2020 Finance Law introduced several tools to improve the taxation of e-commerce. Platforms are VAT liable for the transactions they facilitate. Online sales platforms have also to maintain a logbook for 10 years that identifies the source and the destination of each parcel. The tax administration can also communicate directly with the warehouses and logistics platforms to identify VAT payers. The law allows for the publication of a "blacklist" of non-cooperative platforms.
New Zealand	Marketplaces are responsible for GST on sales made by a vendor through a platform if: the platform is registered or required to be registered for GST depending on its yearly turnover; it is a sale of low-value goods by a non-resident merchant to a consumer (B2C); the platform of the vendor helps deliver the goods to New Zealand. Otherwise, the vendor is responsible for the GST.
Switzerland	Switzerland is considering the full liability regime for 2025, requiring the platforms to become the responsible taxpayers for all goods sold through them.
United Kingdom	Online marketplaces can be liable for collecting and reporting VAT for sales to UK customers (rules do not apply to Northern Ireland from Brexit) if the goods are located outside the UK. When the online marketplace facilitates an import sale under a threshold (135 Pounds), it is responsible for charging and reporting VAT; if the import value is above the threshold, the usual VAT obligations fall on the vendor. If the goods are located inside the UK, the online marketplace is responsible for tax no matter the sale's value.
United States	The marketplace facilitator tax rules were gradually implemented in the US in 2017 and are currently in place in most States in the US. These rules make platforms responsible for collecting and remitting sales tax on behalf of the vendors once the platform sales in that state have surpassed the threshold set by each state. The marketplace facilitators have the responsibility of calculating, collecting and remitting sales tax on behalf of the third-party sellers on their platform. They also get the reporting obligations of the retailers to the tax administration.

Source: UNCTAD, based on various sources.

Table 3
Regulation on the role of digital platforms to collect VAT/GST- developing countries

Bahamas	Marketplaces that advertise and facilitate vacation home rentals in The Bahamas are required to register for and collect VAT on their rental and related sales to consumers in The Bahamas regardless of the registration threshold. The new rules seek to provide for the mandatory registration for all online providers of hotels, condos, or marketplaces for vacation home rentals.
Benin	Marketplaces are responsible for collecting the VAT on imported goods and imported intangible goods by unregistered residents.
Egypt	Marketplaces are responsible to collect GST for B2C transactions from non-residents if beyond a certain threshold.
Kenya	Regulations were introduced to operationalize the collection of VAT on digital marketplace supplies as enshrined in the Value Added Tax (Digital Marketplace Supply) Regulations, 2020: Value Added Tax shall be charged on taxable services supplied in Kenya through digital marketplace.w allows for the publication of a "blacklist" of non-coope-rative platforms.
Puerto Rico	Puerto Rico is requiring marketplace facilitators to collect and remit the tax due on all sales made through their platform in Puerto Rico.
South Africa	VAT collection obligations for intermediaries in digital services transac-tions (e.g., online platforms)
Thailand	Electronic platforms are liable for VAT on electronic services according to the Thai tax policy. When an electronic platform selling electronic services (digital goods) has a yearly turnover beyond a certain threshold (1.8 million baht), it must register for Thailand's VAT.

Source: UNCTAD, based on various sources.

b. Tax collection by marketplaces and digital platforms to cover informal actors

VAT collected by marketplaces and digital platforms could result in the taxation of enterprises in the informal sector, providing incentives towards formalization. Following the discussion of the VAT as a tax on the informal sector (Keen, 2008), collecting the VAT at the marketplace level would enlarge the scope of this tax on the informal sector to e-commerce. Informal firms would pay VAT on their inputs collected by digital platforms without being able to deduct it later – contrary to formal firms – as they do not collect VAT on their sales.

VAT payments to digital platforms as a tax on the informal sector are similar to VAT payments at the border. Such a scheme might be expected to encourage some informal sector businesses to formalize in order to release this "informal tax." It should be accompanied by an active role of the tax administration in simplifying compliance and ensuring informal enterprises have the resources to register and obtain licenses.

For formalization efforts to be successful, firms must see benefits from formalizing. These benefits can be increased when formalization is tied to access to related digital platforms and transactions, potentially encouraging more self-employed entrepreneurs and small-scale firms to formalize. By contrast, imposing excessive taxes on digital technology or mobile payments, may jeopardize progress achieved in terms of financial inclusion and economic development.

Regarding the collection regime, a key challenge is to identify and address technical barriers. A wide range of collection mechanisms have been used. What may work best ultimately depends on whether the sale is domestic or international, whether the transactions are B2B or B2C, and whether they relate to goods or services. It should also be noted that the approaches are not mutually exclusive. Each approach poses its own challenges and none of the approaches are flawless (See Annex, African Tax Administration Forum). Such adjustments may be relatively easy for some tax administrations to implement. For others, this may require allocating significant financial and personnel resources.

c. Information from digital platforms in support of revenue authority risk management

Monitoring and implementing state of the art risk management for tax control and audit of online sellers is challenging due to the lack of reliable and comparable data. Tax collecting authorities face difficulties in identifying and reviewing e-commerce transactions, determining where the product is produced or consumed, especially when suppliers are non-resident and all transactions have been performed and paid electronically.

Due to their strategic position along the supply chain, digital platforms could be relied on for the collection and transfer of any information relevant for indirect taxation compliance to tax authorities beyond the actual collection of the tax. Information collected as raw material for further risk analysis and risk management to support the control strategy of tax authorities on online sales should be detailed and standardized along with information available from digital platforms. This will ultimately support the identification of actors and help to determine what events to be taxed, subjecting them to taxation in different jurisdictions. These setups could aid in simplifying compliance and administrative processes, while also boosting revenue, especially in countries with limited capacity. Additionally, they permit tax authorities to reassess the trade-off between revenue and compliance (see Box 4).

VAT collection by marketplaces could incentivize informal enterprises to formalize for benefits

Involving digital platforms can aid in simplifying tax compliance, collect information and boost revenue generation

Box 4

The role of peer-to-peer (P2P) platforms to collect local taxes: the case of Airbnb

The P2P economy is expanding globally and becoming increasingly prominent as a method of organizing activities and offering services, bolstered by significant advancements in technology. Moreover, it is emerging as an increasingly appealing avenue for individuals to generate income. As various aspects of the P2P economy integrate into daily operations, often displacing traditional businesses, governments may grasp and capitalize on opportunities to generate revenue from this sector.

Airbnb is a privately-owned rental website that provides a P2P platform for individuals to rent rooms, flats, apartments, villas, and other temporary accommodations. The company started its activity without any particular regulation and taxation. However, many local and central governments have since modified their legislation to improve the enforcement of their occupancy tax.

Given the lower costs associated with the emergent P2P lodging sector, two general taxation schemes are proposed for platforms: The first is a service fee on both guests and hosts. The second is a local tax on the service. Since 2014, Airbnb has engaged in hundreds of agreements with cities and local governments to enforce sales, hotel, occupancy and other taxes. In these jurisdictions, Airbnb collects taxes on behalf of the hosts. Most of these hosts could be considered informal given their low turnover. Analyzing a database of 860,000 properties in 27 areas in the United States between August 2014 and September 2017, Bibler et al. (2021) estimated that at least 76 per cent of transactions evaded taxation in jurisdictions that did not have an agreement with Airbnb. They concluded that an agreement would have increased monthly average tax revenue by US$ 155,000 for each jurisdiction.

Source: UNCTAD

Information sharing between platforms and tax administrations can assist crime detection, simplify information requirements and enhance compliance strategies

Moreover, information exchanged between platforms and tax administrations may also be used to detect and combat non-tax aspects of crimes, as well as help administrations become aware of emerging business models. From a taxpayer's perspective, this may result in the simplification and standardization of information regimes. This underlines the importance of considering the implementation of an information-sharing requirement for digital platforms, in light of the possible use of the collected data within the context of a broader VAT/GST compliance strategy for online trade. The information-sharing obligation could apply to digital platforms that act as marketplaces, connecting buyers to sellers through dedicated platforms. As digital platforms may be located outside the taxing jurisdiction, enforcing information-sharing obligations on foreign digital platforms may be challenging. Therefore, this obligation is ideally combined with administrative cooperation arrangements between jurisdictions.

It is not always straightforward for tax administrations to impose obligations on platforms. Unlike traditional suppliers, digital platforms often operate in many countries with different tax rules and regulatory requirements. This can include inconsistent and uncoordinated tax interactions among independent jurisdictions (See Annex, Kapruka). The primary challenge for governments frequently lies in securing cooperation from their operators. This can involve measures such as mandating government registration during platform sign-ups or enforcing compulsory data sharing to aid in tax collection. Furthermore, some digital platforms are start-ups, with an initial focus on technology advancements and increasing the userbase. Tax implications may be of secondary concern. If the compliance costs of satisfying new regulatory requirements are too onerous, some digital platforms may be inclined to withdraw from a jurisdiction or simply not comply with the regulations. High degrees of uncertainty about VAT obligations, alongside complex rules and requirements, can result in burdensome compliance obligations on companies (See Annex, Vertex). For example, in Angola, the complexity of existing VAT reporting and payment obligations posed significant constraints for platforms to comply with national tax obligations (See Annex, Department of International Economic Cooperation of Angola). In the case of Bolivia, the legal system has not been readapted to the current tax trends that cover the digitalization of the economy. In view of this, the government observed that the absence of regulations that allow the payment of taxes for services that are provided from abroad through online digital applications was hampering the ability to collect tax revenue (See Annex, Ministry of Economy and Public Finance of Bolivia).

Information to be collected by digital platforms may cover the elements of the transactions listed below. They are mostly available to digital platforms for their regular activities and are relevant for risk management purposes regarding VAT/GST compliance purposes and more generally for tax authorities monitoring such transactions:

- Supply: nature, date, value, VAT/GST amount and rate;
- Supplier: name, location, tax identification number;
- Shipper: shipping agent; shipping address, fulfilment warehouse;
- Customer: location, information used to determine customer location;
- Payment service provider; and
- Invoice or other document issued to the customer.

Some jurisdictions already require platform operators to communicate to tax administrations the income received by sellers or service providers.

- In Viet Nam, under Decree No. 91/2022/ND-CP (Decree 91), e-commerce platforms must disclose to the national tax authorities information (i.e., name, tax code/identity card number, phone number and revenue gained from transactions on the e-commerce platform) on individuals, organizations and traders who conduct transactions on their e-commerce platform.[23]
- In India, e-commerce marketplace sellers (both Indian-based and non-resident ones) are required to register for GST, file GST returns, and maintain detailed records of their transactions.

Large online enterprises with electronic platforms may often have the means to design software to automatically collect taxes so they can later pass it on to the government (See Annex, Mawazo Tax Policy Research Centre). Some countries have introduced new measures to make digital platforms fully liable for the VAT/GST on sales of goods, services and intangibles by online traders. In Switzerland, for example, the Federal Government is planning to introduce this model, to possibly come into force at the beginning of 2025 (See Annex, Swiss Federal Tax Administration).

In Kenya, regulations were introduced to operationalize the collection of VAT on digital marketplace supplies as stipulated in the VAT (Digital Marketplace Supply) Regulations, 2020. The Regulations have inter alia sought to provide clarity on the

[23] Decree No. 91/2022/ND-CP dated October 30, 2022, on amendments to some articles of the Decree No. 126/2020/ND-CP elaborating the Law on tax administration.

nature of supplies subject to VAT when sold through a digital marketplace, who is liable for the VAT on digital market supplies, and importantly, provide a simplified VAT registration regime for non-residents liable to pay VAT in Kenya (See Annex, African Tax Administration Forum). The Kenyan VAT Regulation has been amended in 2023 to encompass electronic, internet, and digital marketplace supply.

Governments should strike a balance between enabling taxation from sales by non-resident businesses and the compliance burden placed on them

In Latin America, Chile and Colombia have introduced the mandatory registration of foreign taxpayers (Jimenez and Podesta, 2021). In certain cases, a withholding tax is applied on the means of payment for the services (credit cards or transfers of funds abroad). In Chile, it is applicable if foreign suppliers do not comply with the obligation to register, while in Colombia non-resident providers can voluntarily opt for VAT to be withheld directly from their digital services means of payment. In Mexico, platforms providing intermediation services are obliged to withhold the tax from individuals who sell goods or provide services (including hosting services) and to report these withholdings to the tax administration. By contrast, in Argentina, Costa Rica, Ecuador, and Paraguay, non-resident suppliers are not required to register as taxpayers. However, VAT withholding is required by the financial entities that administer the means of payment used for paying digital services.

Governments and tax authorities should strive to strike a balance between the creation of a legal framework that enables taxation and the corresponding compliance burden that is placed on non-resident businesses. This could involve the simplification of the tax system to help mitigate against overly burdensome measures and ensure all enterprises can effectively meet evolving legislative requirements (See Annex, African Tax Administration Forum). At the same time, governments and tax authorities should strive to prevent technology firms capitalizing on weaknesses in their regulatory settings or undermining labour standards and social security requirements. Many of the business models employed by digital platforms thrive in unregulated markets.

This new role for digital platforms to indirectly support revenue authorities would be in line with both recommendations from the OECD regarding information sharing and risk management and with the e-commerce WCO framework regarding principles especially dealing with data and risk management (Principle 1) and revenue collection (Principle 4) and measurement and analysis (Principle 5) (See Box 5).

Box 5
WCO e-commerce framework of standards

The WCO Framework of Standards is intended to provide a global baseline to assist Customs administrations and other relevant government agencies in developing e-commerce strategic and operational frameworks supplemented by action plans and timelines. It will also be useful for Members that are seeking to enhance existing frameworks in order to effectively meet the requirements of new and evolving business models.

The framework provides standards for the effective management of cross-border e-commerce from both facilitation and control perspectives. Overall, the framework: (i) establishes global standards to promote certainty, predictability, transparency, and safety; (ii) ensures security, and efficiency in the e-commerce supply chain; (iii) promotes a harmonized approach to risk assessment, clearance/release, and revenue; (iv) promotes collection, and border cooperation in relation to cross-border E-Commerce; (v) establishes a standardized framework for advance electronic data exchange between e-commerce stakeholders, Customs and other relevant government agencies with the aim to facilitate legitimate shipments, providing a more level-playing field for various stakeholders; (vi) seeks to strengthen cooperation between customs administrations, other relevant government agencies and other stakeholders involved in cross-border e-commerce.

The first principle of the framework addresses the area of advance electronic data and risk management. It notes, among other things that:

"Advance electronic data should be exchanged between the relevant E-Commerce stakeholders and Customs administrations in a timely manner for effective risk management, which is critical in dealing with this rapidly growing new mode of trade.

The establishment and enhancement of the exchange of information between E-Commerce stakeholders and Customs administrations through national electronic interfaces (such as Single Window) based on common messaging standards and a harmonized and standardized dataset would be highly beneficial (for example pre-arrival for general risk assessment and Customs clearance and pre-loading for security risk assessment).

Through the exchange of advance electronic data leading to efficient risk management, the efficiency of the supply chain can be improved while ensuring compliance with regulatory requirements, including revenue collection."

The fourth principle concerns revenue collection and suggests that:

"Customs administrations, working with appropriate agencies or Ministries, should consider applying, as appropriate, various types of models of revenue collection (e.g., vendor, intermediary, buyer or consumer, etc.) for duties and/or taxes.

In order to ensure the revenue collection, Customs administrations should offer electronic payment options, provide relevant information online, allow for flexible payment types and ensure fairness and transparency in its processes.

Models that are applied should be effective, efficient, scalable, and flexible, supporting various business models and contributing to a level playing field for and among the various E-Commerce stakeholders."

Source: WCO

3. Initiatives and rules to monitor and manage non-resident vendors

Beyond requirements on e-commerce digital platforms to collect the GST/VAT on goods and services they provide, specific rules are being implemented for the management and administration of e-commerce taxation of non-resident vendors. Questions raised here concern specifically the rules to determine the physical presence in application of the destination principle, VAT registration for non-resident vendors, and withholding systems through financial and digital intermediaries, which itself raises the issue of double taxation.

a. Rules to determine the place of taxation for international supplies of services and intangibles

The destination principle is the standard approach to collect VAT and more broadly indirect taxation. Following this principle, international standards regarding "place of taxation" for online sales of services and digital products is the location of the customer. Therefore, a jurisdiction should impose VAT on supplies, including sales of digital services and digital products, irrespective of whether or not the supplier is located in that jurisdiction.

The destination principle is typically encapsulated in the legal framework through place of taxation or place of supply rules in VAT regulations by reference to the effective consumption or utility. However, these provisions may not be suitable for supplies of intangible products. This has resulted in the place of the customer's usual residence serving as a proxy for determining the place of taxation. For legal and operational clarity, the proxy of place of residence can be captured in the legal framework by outlining indicators to be used in establishing the place of residence of the recipient of the supplies.

Three main indicators can be considered to determine the place of supply of electronic services:

- The place where the recipient resides or her/his "usual residence;"
- The place where the payment originates; or
- The place where the recipient has a fixed address or business or permanent business presence or establishment.

Some jurisdictions require a combination of these indicators to be present while others require any one of the indicators to be present. Applying a combination of the indicators can be restrictive for the suppliers. This is because the information or indicators may not be present or easily established.

While the requirement to use any of the indicators is not restrictive, it may present other problems. For example, it may open the risk of double taxation or zero taxation for transactions that have indicators present across more than one jurisdiction. It has been recommended (OECD 2015, 2023) to adopt a rule that is consistent with most jurisdictions to simplify and harmonize the determination of the place of supply.

For clarity and ease of compliance, detailed guidelines specific to establishing the place of supply of electronic services should be systematically provided by countries. Moreover, the supplier must not be burdened with determining the place of supply with absolute certainty. Rather, where a foreign supplier has verified that the customer has provided consistent information with a valid credit card, billing address and IP address, all indicating the same address as residence, the supplier could be deemed to have discharged itself of the duty to determine the location of the recipient. Similarly, where the supplier has verified that the customer has provided consistent information indicating where the payment originates from, the supplier could be deemed to have discharged itself of the duty to locate the origin of the payment. Where the supplier has followed the indicators of determining the place of supply satisfactorily, the supplier cannot be held accountable where the place of supply has been determined incorrectly.

In South Africa, a foreign supplier of electronic services is deemed to conduct an enterprise in the Republic if it satisfies any two of the following criteria:

i. the recipient of the services is resident in South Africa;
ii. the payment for the electronic services originates from a bank in South Africa; and/or
iii. the recipient has a business, postal or residential address in South Africa.

In Nigeria, according to the Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers NO. 2021/19, digitally supplied services are considered to be consumed or utilized in the country when:

i. the recipient of the supplies resides in Nigeria, as evidenced by the billing, business, residential or postal address in Nigeria;
ii. it can be inferred from information provided that the consumer's usual place of residence is in Nigeria;
iii. the customer is a company incorporated under any law in Nigeria;
iv. the customer's URL, geo-location or IP address is in Nigeria;
v. it is physically performed in Nigeria;
vi. there is any other evidence suggesting that the supply is consumed or utilised in Nigeria or that such supplies can only utilized in Nigeria; or
vii. a place of consumption cannot be established for the supplies, using any of the above indicia, the place of consumption is Nigeria if the payment for such supplies originates from a bank or any other financial institution licensed in Nigeria pursuant to Nigerian laws.

In Kenya, the Regulation 23 of the VAT (Electronic, Internet, and Digital Marketplace Supply) states that digital supplies are considered to be consumed in the country if:

i. the payment proxy, including credit card or debit card information and bank account details of the recipient of the digital supplies, is in Kenya; or
ii. the residence proxy, including the billing or home address or access proxy including Internet address, mobile country code of the SIM card of the recipient, is in Kenya.

b. VAT registration for non-resident sellers

Simplified registration and compliance regimes can provide an effective solution to collect VAT on cross-border services and intangibles in B2C transactions. Jurisdictions that choose to adopt a supplier collection regime, notably in the context of international B2C trade in services and intangibles, should consider implementing a simplified registration and collection regime to facilitate compliance for foreign suppliers (OECD, 2017). This may reduce the risks of under-taxation and loss of revenue for governments, and of trade distortion due to double taxation. Moreover, a simplified registration and compliance regime for non-resident suppliers can enhance the chances of foreign suppliers complying with the obligations to register and remit the VAT/GST in the jurisdiction of taxation. For developing countries with relatively small markets, establishing and enforcing a simplified registration and compliance regime would require convincing multinationals to comply despite the lack a physical presence in the jurisdiction (Jorratt, 2020).

Developing countries are increasingly adopting regulations compelling non-resident vendors to register for VAT. Several of them have implemented measures to simplify registration, filing and VAT payment. Tables 4, 5 and 6 list examples of countries in Africa, Asia and Latin America and the Caribbean that have implemented a regulation compelling non-residents to register to VAT or GST. The tables illustrate the multiplicity of situations non-resident vendors may need to comply with in different countries. For instance, registration could be mandatory or optional, for B2C only or for B2C and B2B, with a threshold or not, for goods only or for both goods and services.

Table 4
Africa - Rules for non-resident registrations to VAT/GST, selected countries

Country	Description of rules	Year
Angola	Under Law No. 14/23, sales are taxable in Angola if the buyer is based there or if a local financial institution facilitates the payment. These regulations apply to both B2C and B2B sales.	2023
Benin	Non-resident vendors (including online platforms) of digital services to consumers (B2C) are required to register for and collect VAT, regardless of the sales amount.	2023
Cameroon	Non-resident vendors (including online platforms) of goods and services provided in Cameroon through foreign or local e-commerce platforms, are required to register for and collect VAT, regardless of the sales amount.	2020
Côte d'Ivoire	A new simplified compliance procedure has been introduced. It includes new sanctions for operators of digital platforms not permanently established in Côte d'Ivoire in the event of non-com pliance with the obligation to register for tax or to pay VAT on their taxable transactions.	2022
Egypt	Egypt amended its VAT law to include the introduction of a simplified registration and compliance regime for non-resident digital services providers.	2022
Ghana	Non-resident vendors of digital services to customers (B2C and B2B) are required to register for and collect VAT if their yearly sales exceed GHS 200,000. In 2022, the Ghana Revenue Authority (GRA) launched a portal for non-residents to comply with these requirements.	2014 2022
Kenya	Non-resident vendors of digital services to consumers (B2C) are required to register for and collect VAT (simplified registration for non-residents). Non-resident digital services providers are also subject to a 1.5 per cent digital services tax. Finance Bill 2022 states: non-resident digital services providers are required to register and collect VAT for both B2C and B2B supplies.	2020 2022
Nigeria	Non-resident vendors are required to register for and collect VAT on digital services. A new VAT simplified compliance regime for non-resident vendors was introduced in 2022 for non-residents providing services and intangibles, and in 2024 for non-residents selling goods.	2021
Senegal	Non-resident vendors of digital services to consumers (B2C) are required to register for and collect VAT, regardless of the sales amount.	2023

Country	Description of rules	Year
South Africa	Non-resident vendors of digital services to customers (B2C and B2B) are required to register for and collect VAT, if their sales exceed ZAR 1 million in (2019).	2019
Tanzania, United Republic	Non-resident vendors of digital services to consumers (B2C) are required to register for and collect VAT if their sales exceed TZS 100 million. A new simplified registration process for non-resident digital services providers was introduced in 2022.	2015 2022
Uganda	Non-resident vendors of digital services to consumers (B2C) are required to register for and collect VAT if their yearly sales exceed UGX 150 million.	2018
Zambia	Non-resident vendors of digital services (including online platforms) to customers (B2C and B2B) in Zambia are required to register for and collect VAT, regardless of the sales amount.	2024
Zimbabwe	Non-resident vendors of digital services to customers (B2C and B2B) are required to register for and collect VAT if their sales exceed ZWD 1 million.	2020

Source: UNCTAD, based on KPMG, Deloitte, Ernst & Young

Table 5
Asia - Rules for non-resident registrations to VAT/GST, selected countries

Country	Description of rules	Year
Azerbaijan	Non-residents providing goods or services to residents through electronic platforms are required to register for and collect VAT.	2023
Bahrain	Non-resident vendors of digital services to consumers (B2C) are required to register for and collect VAT, regardless of the sales amount.	2019
Bangladesh	Non-resident vendors of digital services to consumers (B2C) are required to register for and collect VAT, regardless of the sales amount.	2019
Cambodia	Non-resident vendors of digital services to customers (B2C and B2B) are required to register for VAT if their sales exceed KHR 250 million in a 12-month period.	2022

Country	Description of rules	Year
India	Non-resident vendors of digital services (including online platforms) to consumers (B2C) are required to register for and collect service tax, regardless of the sales amount.	2016
	Finance bill 2023-24 imposes penalties on online market-places subject to the TCS rules that allow non-GST registered vendors to sell goods or services.	2023
Indonesia	Indonesia's Directorate General of Taxation (DGT) started appointing non-resident providers of digital services to customers (B2C and B2B) as VAT collection agents if they attain a yearly volume of sales.	2020
Kazakhstan	Non-resident vendors of low-value consignments to consumers are required to register for and collect VAT. Special rules apply for goods shipped from the Eurasian Economic Union (i.e., Armenia, Belarus, the Kyrgyz Republic and Russia).	2022
Kyrgyzstan	Non-resident vendors of digital services are required to customers (B2C and B2B) to register for and collect VAT, regardless of the sales amount.	2022
Lao PDR	Lao PDR enacted a new VAT law on March 29, 2024, effective August 1, 2024. This law requires non-resident vendors of digital services, including online platforms, to register for and collect VAT on B2C sales to consumers in Laos, regardless of the sales amount.	2024
Malaysia	Non-resident vendors (including online platforms) of digital services to customers (B2C and B2B) are required to register for and collect service tax if their yearly sales exceed MYR 500,000.	2020
Nepal	Non-resident vendors of digital services to consumers (B2C) are required to register for and collect VAT if their yearly sales exceed NPR 2 million. In addition, non-resident digital services providers are also subject to a 2 per cent digital services tax.	2022
Oman	Non-resident vendors of digital services to consumers (B2C) are required to register for and collect VAT, regardless of the sales amount.	2021
Palau	Non-resident vendors are required to register to GST if their sales exceed the registration threshold of US$ 300,000 (US$ used in Palau).	2023
Tajikistan	Non-resident vendors (including online platforms) of digital services to consumers (B2C) are required to register for and collect VAT, regardless of the sales amount.	2021

Country	Description of rules	Year
Thailand	Non-resident vendors (including online platforms) of digital services to consumers (B2C) are required to register for and collect VAT if their yearly sales exceed THB 1.8 million.	2021
Uzbekistan	Non-resident vendors (including online platforms) of digital services to consumers (B2C) are required to register for and collect VAT, regardless of the sales amount.	2020
Viet Nam	Non-resident vendors of digital services to customers (B2C and B2B) are required to register for and collect VAT, regardless of the sales amount.	2022

Source: UNCTAD, based on KPMG, Deloitte, Ernst & Young

Table 6
Latin America and Caribbean - Rules for non-resident registrations to VAT/GST, selected countries

Country	Description of rules	Year
Barbados	Non-resident vendors of digital services to customers (B2C and B2B) in Barbados are required to register for and collect VAT, regardless of the sales amount.	2019
Chile	Non-resident vendors of digital services to consumers (B2C) in Chile are required to register for and collect VAT, regardless of the sales amount.	2020
Colombia	Non-resident vendors of digital services to consumers (B2C) in Colombia are required to register for and collect VAT, regardless of the sales amount.	2018
Costa Rica	A new VAT system was introduced with provisions on the sale of digital services by non-residents to customers in Costa Rica. The general tax administration (DGT) establishes a list of non-resident vendors that are subject to the VAT on their sales of digital services made to consumers (B2C), regardless of the sales amount.	2019 2020
Ecuador	Ecuador levies VAT on digital services provided by non-residents to consumers. Alternatively, non-resident digital services providers can opt to register for, collect, and remit VAT.	2020
Mexico	Non-resident vendors of digital services to consumers (B2C and B2B) in Mexico are required to register for and collect VAT, regardless of the sales amount.	2020

Country	Description of rules	Year
Uruguay	Non-resident providers of audio-visual services and intermediation services to customers (B2C and B2B) are required to register for and collect VAT, regardless of the sales amount.	2018

Source: UNCTAD, based on KPMG, Deloitte, Ernst & Young

c. Withholding mechanisms on payments to non-residents: overview from selected countries' experiences

Some countries have implemented withholding mechanisms to withdraw VAT/GST on payments to non-resident vendors. Table 7 lists and details experiences from several developing countries where it is mostly the intermediary financial institution that oversees the withholding action. These mechanisms raise the risk of double taxation (See Box 8).

Table 7
Withholding mechanisms on payments to non-resident vendors, selected countries

Azerbaijan	On April 16, 2021, the Azerbaijani Ministry of Taxes clarified that banks must calculate and withhold VAT from purchases paid online by individuals not registered with the tax authority.
Bangladesh	On June 11, 2020, the National Board of Revenue in Bangladesh issued instructions to local banks to withhold VAT when remitting money to non-resident service providers. This applies not only to digital services, but any services rendered to local customers by a non-resident service provider.
Chile	On August 21, 2020, the servicio de impuestos internos (internal revenue services) issued a resolution requiring banks to present a quarterly Payment Cards Report identifying each payment to entities not residing or domiciled in Chile. On May 13, 2022, the servicio de impuestos internos released Resolution N°46/2022, which establishes an official registry or list of non-resident vendors that will be subject to the withholding of the VAT, which are referred to as Contribuyentes IVA SD Afectos a Cambio de Sujeto. Accordingly, Chilean financial institutions issuing credit or debit cards, or any other instrument used to transfer payments to listed foreign vendors, will be required to withhold the corresponding VAT.
Colombia	According to Resolution No. 000049, non-resident service providers may opt to have VAT withheld directly at the source on payments for their digital services by issuers of credit and debit cards, the sellers of prepaid cards, and other intermediaries facilitating payment for digital or electronic services instead of collecting VAT from customers.
Costa Rica	The General Directorate of Taxation (DGT) established two mechanisms to collect the VAT of those platforms: registration by non-resident digital services provider or withholding by credit and debit card issuers effective October 1, 2020.

Country	Description of rules
Ecuador	Ecuadorian credit or debit card providers are adding and withholding the VAT amount when the user pays for the digital services. On September 29, 2020, Ecuador published Resolution No. NAC-DGERCGC20-00000061, which establishes new rules for withholding at source for VAT purposes. The new resolution replaces Resolution No. NAC-DGERCGC15-00000284 of 2015, including new provisions in relation to withholding of VAT on the import of digital services.
Panama	The Economy and Finance Commission of the Congress of Panama approved in 2021 a draft bill to apply VAT to digital services provided by foreign vendors to be withheld by financial services intermediaries.
Paraguay	Effective January 1, 2021, Paraguayan financial intermediaries, including credit and debit card providers, are required to add and withhold VAT when a Paraguayan user pays for digital services provided by non-residents.

Source: UNCTAD, based on various sources

Withholding mechanisms are also a powerful tool to deal with tax payment of non-resident. Beyond VAT, it aims to protect the base of corporate income tax (CIT) against aggressive tax planning that digitalization and "servitization" may foster. However, Double Tax Agreements (DTAs) may limit the application of withholding taxes (see Box 6).

Box 6
Double taxation agreements

Double taxation agreements (DTAs) aim at reducing tax barriers to cross-border trade and investment[24] through the allocation of taxing rights on the income arising from international transactions between the parties to the treaty. They do so by attempting to balance the claims of residence states (where the owners of capital reside) and the source states (where capital is invested). Although each treaty will use different ways to strike that balance, treaties that follow more closely the UN Model Convention between Developed and Developing Countries generally allow more taxation by the source state than those that follow more closely the OECD Model Tax Convention on Income and on Capital.

Modern treaties are "schedular", providing different rules for different types of income, as well as the "residual clauses" of "business profits" and "other income". Unless there is a specific provision in the treaty addressing income from e-commerce and digital services, such income will fall under the business profits article. In the absence of such a specific provision, the source state often will not be able to tax the business profits arising from e-commerce because the recipient of the income will not have a "permanent establishment" in that country.[25] This would be true whether the source state's domestic law imposes a gross withholding tax on individual payments or provides for taxation on a net basis.

The UN Tax Committee therefore agreed to add Article 12A and 12B, addressing

[24] Most countries levy tax on the worldwide income of their tax resident and income generated by any activity located on their territory.

[25] For instance, the OECD and the UN consider that a web site cannot constitute a PE, while a taxpayer may have a permanent establishment if it maintains a physical location to house a server or computer equipment.

fees for technical services and income from automated digital services (e.g., online advertising, digital content, cloud computing services, supplies of user data), respectively, to the UN Model to allow taxation of such income even in the absence of the physical place of business that generally constitutes a permanent establishment.[26]

In the VAT context, the tax authorities and tax lawyers use the notion of Business Establishment (BE) and Fixed Establishment (FE). The former is the place where the essential decisions regarding general management are taken. In practice, BE corresponds to the place where the board meets. An FE is any establishment with a minimum size in terms of human and technical resources for the provision of services as defined in Article 11 of the Council implementing Regulation (EU) n°282/2011. The notion of FE should also evolve, as the UN Model has, with the development of e-commerce that remains related to the existence of some physical installations.

Source: UNCTAD

d. Reverse charge mechanisms (B2B)

The reverse charge mechanism is an indirect tax concept that shifts the responsibility for paying VAT or GST from the supplier to the buyer. It may be viewed as a special case of the withholding instrument. The latter may concern any type of direct and indirect taxes while the reverse charge is built specifically for VAT and other indirect taxes. Moreover, while a withholding mechanism may introduce a third party such as banks, the reverse charge involves only the seller and the buyer. With this mechanism, the buyer accounts for any VAT due in its jurisdiction on the goods and services and intangibles it has purchased from a non-resident supplier. The non-resident supplier is henceforth relieved from the obligation to be identified for VAT purposes and to account for the tax in the customer's jurisdiction in respect of the transaction. The reverse charge mechanism applies only to transactions between businesses (B2B) for goods and services and may apply to either domestic or cross-border transactions.

In a traditional VAT system, vendors generally charge VAT on their supply of goods or services, collect tax from the customer, and remit it to the tax authorities. By contrast, under the reverse charge mechanism, customers are responsible for paying VAT due on a transaction directly to the tax authorities. In this case, the supplier issues an invoice without VAT, and indicates a reference to the reverse charge mechanism on it. The customer typically achieves this by declaring the VAT due on the supply received from the non-resident.

This mechanism has the following advantages:

I. Decreased compliance burden for both the non-resident suppliers and the administration of the buyer's jurisdiction; non-resident suppliers are no longer required to register in the jurisdiction of the buyer or to collect and transmit the taxes; the tax administration does not need to identify, register, audit any non-resident vendor from multiple origins facing different systems from a country to another).

II. Decreased VAT fraud risk: local tax authorities have a decreased risk of tax fraud where non-established/non-resident (and therefore harder to chase and enforce rules against) taxpayers could disappear with the local VAT they have collected. The compliance

[26] A non-resident may also have a permanent establishment by reason of the activities of an agent in the jurisdiction, but this rule is generally not relevant in this context.

burden is shifted from the non-resident supplier to the (local) buyer, making compliance control and audit by the tax authority of the buyer easier.

The VAT reverse charge mechanism is limited to B2B transactions because individual consumers from B2C transactions do not have a VAT registration number and, consequently, cannot self-assess VAT under the reverse charge mechanism. It is therefore essential that the non-resident vendor can easily verify that the buyer partner has a valid VAT number, i.e., is appropriately registered and identified by its local tax authorities. For this reason, some jurisdictions require that non-resident suppliers and digital platforms visit or link their systems through an API to the tax administration's website to check the validity of customers' VAT registration or tax identification numbers. Among others, Nigerian Federal Inland Revenue Service (FIRS) has implemented a portal for verification of taxpayers' identity numbers (TINs).

Some developing countries have taken steps to apply the reverse charge mechanism.

- In Nigeria, this mechanism has been introduced in the VAT Act to cover situations where a supplier is not required to include the VAT on its invoice and collect VAT, or where the supplier has defaulted in charging VAT. The business recipient of the supply is in this case required to self-account for the VAT by charging and remitting the tax to FIRS. The reverse charge rule is also applicable to situations where a non-resident supplier in a B2B transaction fails to include or collect VAT on its digital supplies, in which case the Nigerian recipient is required to self-account and remit the tax due to the FIRS.
- Despite the absence of a reverse charge mechanism in South Africa, the country's Revenue Service has established a publicly accessible web portal. This portal enables suppliers to verify the authenticity of a customer's VAT registration number, as well as the reverse process, allowing customers to verify a company's VAT registration status in cases where the registration number may be absent from commercial and tax documents.
- The Kenya Revenue Authority (KRA) requires electronic invoices to include (among other things) a PIN (personal identification number) of the recipient, if the recipient intends to claim input tax for the VAT they have paid. The Authority's website states that the PIN Checker allows you to confirm whether or not a particular PIN is genuine. A genuine PIN is generated by the KRA Domestic Taxes Department System and is in active status. The Information provided by the PIN Checker is limited to basic details of the taxpayer. The incentive to use a correct PIN rest principally with the purchaser to get this detail correct, because the purchaser would seek to claim input tax. But it is possible for the supplier to check the validity of a customer's PIN via the iTax online service area of the KRA's website.
- In Cambodia, the obligation to pay the VAT charged by the non-resident entity to the General Department of Taxation rests with the taxable person under a VAT reverse charge mechanism.
- A self-assessment taxpayer, who receives digital goods, services or e-commerce enabled products from a non-resident taxpayer, is required to file a tax return and pay the applicable VAT on behalf of the non-resident taxpayer (See Annex, General Department of Taxation of Cambodia).

4. IT and technology implications: role of technology, need to upgrade (skills, IT infrastructures, risk management)

In the context of indirect taxes related to e-commerce and digital trade, it is important to consider how to strengthen the capabilities of governments to implement tax reform. Most tax administration models involve face-to-face interactions and the use of manual systems for administration. Technical and human resource constraints may permeate alongside rigid bureaucracy, and insufficient access to or use of data for enforcement and tax compliance purposes (See Annex, Vertex). These factors frequently result in high enforcement and tax compliance costs and therefore relatively high levels of tax non-compliance, fraud, evasion and avoidance (Okunogbe and Pouliquen, 2018). Tax administration increasingly necessitates data intensive procedures, and digitalization has the potential to enhance various administrative functions. This includes the collection, sharing and use of tax information. Investments in information technology (IT) are thus a central component of many tax reform efforts (Arewa, Davenport, 2022).

Digital transformation in tax administration faces challenges due to low digital infrastructure and literacy, and weak accounting practices

The uptake of digitalization and implementation of IT projects depend on the maturity of the tax administration and tax compliance culture. While the potential for digitalization to transform tax administration is evident, many developing countries remain at a nascent stage of their digital transformation. This is due to factors such as low levels of digital literacy, limited Internet and mobile connectivity, and weak accounting practices. The implementation of major IT projects may also be difficult due to technical and political constraints compounded by inadequate legal, regulatory and institutional frameworks.

Improved data gathering techniques, combined with increased processing power, can allow governments to strengthen existing ways of collecting taxes. Digital technology can provide solutions to reduce compliance costs (See Annex, Vertex). For example, new automated processes and technological tools can make it easier and cheaper for taxpayers to fill out tax returns and for governments to process them. The development of digital interfaces can help to streamline engagements with foreign and remote taxpayers, reduce complexities and administrative barriers and ultimately secure voluntary compliance and support. One option is the introduction of a central tax collecting platform to reduce the compliance burden and ease administrative processes.

Effective sequencing of tax reform is important. For example, it may be important to restructure the organization of tax collection before introducing new technology. Some tax departments in developing countries are organized by type of tax rather than function. As a result, the introduction of new technologies has often been insufficient on its own to overcome the underlying barriers to establishing more effective tax administration (World Bank 2016). New technologies may also require existing solutions to be updated. A first step could be to invest in technology tools to register taxpayers and bring them into the tax net. This may be followed by simplifying data-sharing protocols within and beyond the revenue authority, enhancing audit and case management functions, and improving internal data management and risk management protocols.

Countries have invested heavily in technological systems and platforms, including taxpayer portals, automation, integrated databases, e-filing/returns systems, and e-payment platforms (Moore 2020). A range of electronic processes have supported the operation of collection regimes and enabled tax authorities to improve collection, provide better taxpayer service, and simplify compliance through the use of IT systems, data and automation.

IT projects meant to bolster capacity often involve two types of investments. The first seeks to improve automated data-sharing protocols, facilitate accessing third-party information, boost audit and risk management capacity, and improve debt collection methods for various types of taxes.

In the case of Nigeria, several technologically driven administrative processes have been put in place, such as the automated administrative and operations processes, and several software and IT solutions have been deployed to ease compliance (See Annex, Federal Inland Revenue Service of Nigeria). Given that the most practical way to engage with tax administrations from outside the jurisdiction is through electronic processes, registration and compliance, processes could in principle be delivered through electronic means. This may reduce burdensome requirements for physical movement of documentation.

The Ugandan Revenue Authority has leveraged existing automated processes to provide for online registration, filing and payments by non-resident suppliers through modifying existing business processes to tailor them for the purposes of non-resident suppliers of electronic services (See Annex, Uganda Revenue Authority). Technological solutions may also enhance the transparency and auditability of internal processes to incentivize good administrative performance and reduce the scope for collusion and corruption.

Additional tools include E-filing and E-payments, as well as building upon the rapid expansion of mobile money technologies. Coupled with complementary institutional and process reforms and improving taxpayer education, plus creating new avenues for communication between government and taxpayers, such efforts can considerably enhance the collection by revenue authorities in developing countries.

For technology to contribute positively to trust, IT projects must build in robust security and privacy controls, in adherence with privacy-by-design principles, to ensure that taxpayers' data remain safeguarded and that they trust the government to use their data ethically. The absence of such safeguards can have very negative effects on trust-building. Country experiences suggest that numerous benefits and solutions are within reach. In low-capacity contexts with weak connectivity and digital literacy rates, IT projects should fully account for the potential transition costs (and negative externalities) faced by taxpayers and tax officials. Solutions should be aligned with reform objectives and responsive to administrative requirements and users' dynamic needs. IT projects are less likely to succeed if decision-makers fail to account for broader regulatory and administrative constraints, even though some of these factors are outside the control of the revenue authority. They should prioritize process reengineering and improved inter- and intra-agency cooperation and consider the administration's capacity, directing technology investments accordingly. Additional efforts could include extensive engagement with stakeholders early in the process to better understand their needs and reservations. Efforts could also include investments in communication tools and strategies to align IT projects with the challenges in providing public services. There may be benefits to concerted outreach efforts led, if possible, by local and national champions or a reliance on local vendors who may be more culturally aware than their international counterpart.

> IT projects should build in robust security and privacy controls to ensure that taxpayers' data remain safeguarded

5. International policy dialogue, guidelines and principles

Considering the growth of e-commerce and digital trade, and the inherent connection of these sales being subject to VAT, United Nations member states have requested more concerted efforts at all levels to strengthen international tax cooperation as a way to help build the trust and spur the transformations envisioned in the Addis Ababa Action Agenda and the 2030 Agenda. Member states have also called upon the United Nations and other international organizations to support developing countries in building policy and administrative capacity for the effective and efficient indirect taxation of the digital economy.

To date, most work in this area has been conducted by the OECD, which has developed guidelines and a set of principles that seek to ensure an efficient application of VAT to e-commerce. These resources include The International VAT/GST Guidelines (OECD, 2017a) and the Mechanisms for the Effective Collection of VAT/GST Where the Supplier is Not Located in the Jurisdiction of Taxation (OECD, 2017b). The first contains internationally agreed standards and recommended approaches to address the issues that arise from the uncoordinated application of national VAT systems in the context of international trade while the second presents good practice approaches deployed by jurisdictions when they require foreign suppliers to register and collect VAT on cross-border B2C sales. Building on its previous reports, the OECD published "The Role of Digital Platforms in the Collection of VAT/GST on Online Sales" (OECD, 2019b) providing solutions for digital platforms in the collection of VAT/GST in the digital trade of goods, services, and intangibles, such as new measures to make digital platforms liable for tax on sales made by online traders, data sharing and cooperation with tax authorities.

Regional Tax Associations, such as the African Tax Administration Forum (ATAF), The Commonwealth Association of Tax Administrators (CATA), the Pacific Islands Tax Administrators' Association (PITAA) and the Caribbean Organization of Tax Administrators (COTA), a subsidiary of the Caribbean Community (CARICOM), are also supporting jurisdictions to improve revenue mobilization. Through sharing best practices on effective VAT administration on cross-border supplies, alongside technical assistance initiatives, regional bodies are playing a key role in facilitating regional consistency in the rules implemented across jurisdictions to mitigate the challenges of multijurisdictional compliance for businesses, thus enhancing voluntary compliance. COTA/CARICOM maintains and presents updated information on CARICOM Tax Systems in terms of tax structures and revenues. The site facilitates cross-country comparisons aimed at improving the use of best practices in taxation in the region, as well as to support efforts towards more harmonization and cooperation among the CARICOM Member States.

Specifically focusing on the policy, legislation and administrative considerations mentioned above, regional tax associations are also working towards the effective implementation of a VAT compliance regime for cross-border supplies in the digital economy. For example, ATAF provides technical assistance to African jurisdictions to address opportunities and challenges related to VAT and e-commerce. Several tax authorities, including the Uganda Revenue Authority and Ghana Revenue Authority, have received technical assistance with specific focus on the policy, legislation and administrative considerations for the effective implementation of a VAT compliance regime for cross border supplies in the digital economy.[27]

Country responses commonly fall under four broad solutions: (i) participation in multilateral conventions, unilateral legislation, and bilateral measures, such as

[27] See more, https://www.ataftax.org/cross-border-supply-effects-on-vat-compliance-in-africa-s-digital-economy.

the Inclusive Framework and G20-OECD proposals (i.e., Pillars 1 and 2), and the UN Model Tax Convention; (ii) changes to the definition of permanent establishment in domestic laws to include cases where there is no physical presence in a country but there is a digital presence; (iii) discrete digital taxes; and (iv) applying VAT to digital transactions, especially cross-border transactions. The response of individual countries is dependent on a number of interconnected factors, including the type of tax in question (i.e., income tax, discrete digital taxes, and VAT); the readiness of tax administrations (e.g., technological and institutional capacities); and other circumstances (e.g., size and development of the economy and the share of the economy relating to digital transactions).

There appears to be a disconnect between international reform models and the local capacity constraints in developing countries, as well as the need to offer simplified reform strategies tailored to local capacities (Prichard and Moore 2018). The needs of lower-income countries still require greater attention. Many developing countries still lack the capacity to adequately enforce international and domestic tax rules. The introduction of additional complex reforms will pose significant challenges for tax administrations, particularly in determining prioritization amidst existing initiatives. Many tax administrations struggle to enact reforms due to resource constraints. Handling daily operations with limited human, technological, and financial resources, they face numerous reform initiatives, encompassing general revenue mobilization and new international standards. There is a need to counter the practical limitations to accessing relevant information for both capital importing and exporting developing countries (Clavey et al. 2019).

At the international level, developing countries will likely continue to advocate through regional blocs for reforms that simplify international rules and allocate greater taxing rights to source countries. Various options are available and within reach, including improving transparency and data sharing related to country-by-country reporting of corporate tax data, increasing reliance on withholding taxes or safe harbour rules, and adopting a destination-based cash-flow tax. Valuable guidance can be drawn from international guidelines that can be reformulated to align with countries' own adaptations and parameters. In theory, some of these options could be adopted by individual countries or regional groupings, even in the absence of an international agreement, because many lower-income countries continue to debate whether the OECD-led international corporate tax reform process will meet their needs (Dom and Prichard, 2022). Although international tax rules and treaties pose challenges, improved outcomes are likely to depend most critically on building stronger domestic systems.

6. Toolkits and technical assistance

In view of the shared issues faced by many countries, toolkits have recently been developed by multilateral organizations to offer assistance to national tax administrations.

For *Latin America and the Caribbean*, the OECD and the World Bank – with contributions from the Inter-American Center of Tax Administrations (CIAT) and the Inter-American Development Bank (IDB) – have developed a toolkit that aims to assist tax authorities in the LAC region with the design and implementation of a comprehensive VAT strategy to help governments secure significant VAT revenues and ensure a level playing field between domestic and non-resident online suppliers. This toolkit is directed towards all types of e-commerce based on the specific circumstances in LAC countries. It includes detailed guidance on designing policy and legislation, the administration of effective collection mechanisms, and a comprehensive audit and enforcement strategy (OECD, CIAT, ECLAC and IDB, 2021).

Many tax administrations struggle to enact reforms due to resource constraints

Similarly, for *Asia and the Pacific*, the OECD, World Bank and the Asian Development Bank (ADB) developed a toolkit that provides detailed guidance for the implementation of a comprehensive VAT strategy directed at all types of e-commerce (OECD, WBG and ADB, 2022). It is designed to help governments secure important VAT revenues and to ensure a level playing field between brick-and-mortar retailers and foreign online merchants.

The most recent toolkit for *Africa*, developed by the OECD, World Bank and ATAF (OECD, WBG and ATAF, 2023), provides detailed guidance for the implementation of a comprehensive VAT strategy directed at e-commerce. With VAT the single largest source of tax revenue in African jurisdictions on average, it aims to help Governments in Africa to secure significant VAT revenues and to ensure a level playing field between traditional bricks-and-mortar businesses and foreign online merchants.

Other tools available include CIAT's open software called Digital Economy Compliance (DEC). It was developed to facilitate the simplified registration of the digital companies and ease compliance burden of tax obligations. The software can be tailored to the unique jurisdictional contexts of each tax administration according to their needs and design of internal processes.

The IMF and World Bank have developed the Tax Policy Assessment Framework (TPAF), which seeks to enable systematic and consistent assessments of all major tax sources. The goal is to provide a solid analytical basis for the design of policy options that can be used by providers of technical assistance and country officials.[28]

Finally, the ADB's Pacific Tax Hub supports domestic resource mobilization and international tax cooperation by providing an open, inclusive, and pan-regional tax platform to strengthen regional resources of knowledge, collaboration and development, expertise, and finance on domestic resource mobilization.[29]

[28] See WBG/IMF, 2022, available at, https://www.imf.org/en/Data/TPAF
[29] See ADB, 2022, available at, https://www.adb.org/what-we-do/asia-pacific-tax-hub

D. Conclusions and policy recommendations

The continued growth of e-commerce in developing countries makes it increasingly important for them to adopt and implement effective indirect taxation in this area.[30] This study has explored key issues and considerations of the current state of play of indirect taxation of e-commerce in developing countries. Ultimately, the design of such tax policies should maximize the opportunities for revenue generation while reducing possible regressive impacts and economic distortions. Devised solutions should aim to meet the minimum of international standards and best practice in terms of scope, tax fairness, non-discrimination, administrative feasibility and tax sovereignty. When designing the taxation approach, due consideration should be given to a fair allocation of tax revenue, a simple design of taxation system, and the capacity of the tax administrations.

The indirect taxation of e-commerce raises several challenges to tax authorities and revenue collecting agencies. Special attention should be paid by governments to manage non-resident online sellers, specifically regarding digital services, and ensuring that tax authorities or revenue agencies can access relevant knowledge and information about the online taxpayers.

Governments in developing countries increasingly recognize the importance of VAT reform. The adoption and implementation of frameworks to effectively levy VAT on imported goods and services hold the promise of improved outcomes across compliance, revenue collection and a level playing field for domestic and international businesses.

As developed countries are more likely to adopt reforms, there is a risk of developing countries being overlooked in attaining much needed revenue. Reflecting these challenges, tax reforms need to consider the circumstances of each jurisdiction (economic development, size and growth of the digital economy and tax administration capacity. Many developing countries lack essential components of effective revenue administration, particularly concerning core processes like registration, filing and payment.

Importantly, digitalization and the management of key risks associated with transactions involving multinational enterprises remain imperfect, and legislative provisions regarding tax administration and procedures are often inadequate. Furthermore, many revenue administrations in developing countries have yet to establish a dedicated international tax unit or work programme, complicating the implementation of tax reforms at the regional and international levels. As highlighted in this study, there are various resources that can be harnessed by countries that are looking

30 The indirect taxation is undoubtedly the unique way for developing countries to tax the economic activity of digital non-tax-resident multinational companies.

to strengthen their VAT systems related to e-commerce. These should be used and supported as needed by additional technical assistance from development partners.

Table 8 displays the main options explored in this study and highlights key policy options for developing countries to consider. The preferred approach may depend on the digital readiness/e-commerce market size of the country. While some developing countries have already adopted a strategy to regulate e-commerce and to address the main indirect taxation issues, others are still at an early stage of this process. The multiplicity of options induces a potentially complex environment where foreign sellers may avoid payment or remittance of taxes due and/or where the compliance costs may deter firms to digitalize.

Table 8
Main issues and options related to indirect taxation of e-commerce

Foreign suppliers, lack of information on the residence of suppliers	Review the definition of tax residence for businesses. The tax resident customer withholds tax due by foreign suppliers.	Introduce the notion of Fixed Establishment, the esidence of services' recipients. Tax withholding mechanism	DTAs may limit the scope of withholding mechanism.	Almost all countries.[31]
Administration costs and activities' fragmentation	Review the *de minimis* rule.	Harmonize the rule at the regional level.	Fix a relevant threshold	Eastern African Community: US$ 50 [32]
Monitoring non-resident vendors' activities and collecting taxes due	Require registration of foreign sellers. The buyer is liable for VAT due by the non-resident sellers.	In the destination country. At a regional digital portal. VAT reverse charge	Standard approach for any type of commerce. Recommendation for simplified registration regime. Ex: EU One-Stop-Shop. B2B only	Simplified regis-tration regimes in Benin, Cameroon, Egypt, Ghana, Côte d'Ivoire, Kenya Nigeria, Senegal, South Africa, Tanzania, Uganda, Zambia, Zimbabwe. Azerbaijan, Bangladesh, Chile, Columbia, Costa Rica, Ecuador, Panama, Paraguay, Peru.

[31] https://taxsummaries.pwc.com/quick-charts/withholding-tax-wht-rates
[32] https://www.eac.int/press-releases/157-trade/2080-eac-sectoral-council-of-trade,-industry,-fi-nance-and-investment-calls-for-harmonisation-of-covid-19-protocols-in-the-region

Issue	Policy options	Modalities	Comments	Examples of developing countries
Monitoring e-commerce, non-registered operators (non-resident)	The digital platform is VAT liable, or liable of its hosted sellers.	The digital platform is VAT registered or collects and remits VAT but is not VAT registered - several degrees of VAT liability.	OECD guidelines	Bahamas (for home rentals), Benin, Egypt, Kenya, Puerto Rico, South Africa, Thailand.

Source: UNCTAD.

Design a role for digital platforms to support the tax authorities in monitoring and regulating e-commerce. Online marketplaces are natural central nodes in the e-commerce system, which makes them useful as potential tax collectors and information sources. (1) As tax collectors, not only for cross-border transactions with non-resident vendors but also for domestic sales. (2) As a source of information that will enable support for the revenue authority in implementing proper risk management using large quantities of centralized and shared data. Requiring digital platforms to collect indirect taxes can be an opportunity to tax unregistered economic operators (informal sector) doing business through e-commerce platforms.

Implement simplified registration and compliance regimes. The design of simplified registration regimes provides an effective solution to collecting VAT on cross-border services in business-to-consumer (B2C) transactions from non-resident vendors. While developing countries are increasingly adopting regulations requiring non-resident vendors to register for VAT with multiple different scenarios, only a few countries have clearly adopted a simplified reporting system for such vendors (notably Kenya in 2020, Nigeria and Tanzania, United Republic of in 2022). The adoption of registration of non-resident vendors should be implemented without imposing cumbersome procedures. Countries should aim for a simplified collection and registration regime to enhance the chances that foreign suppliers will comply with the obligations to register and remit the VAT/GST in the jurisdiction of taxation.

Leverage regional cooperation opportunities. Since most developing countries belong to regional trade agreements or custom unions (See Table 1), they should take advantage of their membership in “regional blocs”. Within regions, differences in economic structure, administrative capacity and culture tend to be smaller, potentially facilitating agreement on regional tax coordination. These considerations may present opportunities to implement similar mechanisms to the One-Stop-Shop.[33] It may help to consolidate the collective bargaining influence of these countries in dealing with multinational digital platforms:

- It can ensure harmonized and consistent regulation and taxation within a region;
- It can help to secure tax revenue by recording and clearing transactions;
- It may reinforce the economic integration among member States;

[33] Latin American countries held the First Latin American and Caribbean Summit for Global Taxation, focusing on global tax coordination, wealth and capital income taxation, combating tax havens and eco-friendly fiscal policies. Organized by the Colombian Ministry of Finance with Brazilian and Chilean support, it gathered 16 countries for comprehensive tax discussions.

- It may legitimize the role of the Commission or Committee in charge of the well-functioning of the regional trade agreement.

Consider the VAT reverse charge mechanism. This mechanism can allow countries to secure indirect tax revenue. It is relatively straightforward to implement for imported goods, since it involves the payment of VAT at the border. It may be more delicate for (digital or not) services. For B2B transactions, this mechanism could be linked to the CIT deductibility of the cost of the services. B2C refers to the registration of digital platforms and potentially their customers.

Reinforce the CIT base by introducing a withholding tax mechanism. This device aims to limit the risk of profit tax erosion through tax planning and avoidance. It is an effective instrument that can be seriously limited by existing DTAs. A revision of DTAs in line with the UN model would allow countries to achieve effective direct and indirect tax base protection. The 2021 version of the UN Model addresses "concerns expressed by developing countries regarding tax treaty obstacles to the taxation of foreign enterprises on [revenue] from automated digital service."[34]

Communicate with stakeholders through national consultations. Developing countries aiming at implementing tax reforms should engage in consultations with the business community and e-commerce operators when designing a new collection regime, and properly communicate upon their implementation. In Uganda, for example, dedicated client response teams have been established. In Malaysia, the Inland Revenue Board has adopted a 'nudging' approach to influence the behavior of online traders. Online nudging and monitoring involve sending messages or e-mails to e-commerce merchants regarding their responsibility to submit the Tax Declaration Form on time. Collectively, these improvements have the potential to increase domestic revenue mobilization.

Adopting overarching principles of tax policy and governance, including enforcement, facilitation, and trust, can help developing countries enhance enforcement and improve facilitation, leading to higher compliance rates. This may strengthen state capacity, generate political support for further reforms, and ultimately create stronger fiscal contracts between resident populations and the government. Adopting a principle with regionally harmonized options could be a way to simultaneously strengthen the position of developing countries and international multinationals aiming to doing business in developing countries through added transparency.

Improve capacity-building options. The United Nations, including UNCTAD, and other international organizations can play an important role in assisting developing countries as they develop and implement tax reforms, not least through research and capacity building. For developing countries, the adoption of such reforms is essential not only to create trust in online (cross-border) activities, but also to guarantee a fair allocation of tax revenue, a simple design of taxation system, and capacity of the tax administrations. This need for technical assistance is even greater considering the multi-dimensional elements considered (taxation and regulation, IT technical upgrades, data management and analytics)

[34] See: https://financing.desa.un.org/un-model-convention.

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Annex: Lessons from Selected Countries, Private Sector, Research Institutes, International and Regional Organizations

This annex presents contributions highlighting various approaches, along with associated policy considerations, provided by selected countries, private sector representatives, academics, research institutions, international and regional organizations. The contributions can serve as a reference point to assist policymakers in their efforts to evaluate and develop legal and administrative measures that reflect economic, legal, institutional, cultural and social circumstances.

A. Country Perspectives

1. Angola: Administrative measures from the taxation of online trade of goods and services during COVID-19 [35]

a. Administrative measures for taxation on E-Commerce: Experience from Angola

With the outbreak of the COVID-19 pandemic, electronic commerce, including goods and services, became increasingly relevant for consumers. Transaction volume of these platforms also increased. This resulted in a need to guarantee appropriate levels of taxation and a legal framework with specific rules for the effective application of Value-Added Taxation (VAT) on the online sale of goods and services.

Consumption tax, included with the indirect tax topics such as VAT, is of particular importance. VAT affects all stages of the economic supply chain – producers, wholesalers and retailers, the sale of goods or services – but in such terms that each operator pays the sum of the value added through his or her activity.

One of the challenges that cross-border e-commerce poses is developing and implementing suitable legislative measures. The world has changed, and there are legislative realities that still require adaptation. The taxation of online purchases is a relatively recent phenomenon with growing importance for many countries worldwide.

b. Rules and procedures applied in the National Territory

In terms of existing rules of taxation in Angola, it is important to highlight the rules regarding passive VAT subjects (model B2B). In principle, taxation is secured, insofar as the Angolan VAT legislation already provides for the reverse charge mechanism. Through this, the economic agent that operates and acquires services from non-resident taxable persons in Angola becomes responsible for the settlement of VAT, instead of the non-resident provider, pursuant to paragraph 2 of article 29, in conjunction with paragraph 4 of article 33, subparagraph b), both of the VAT code (CIVA).

Multinational enterprises, such as Netflix, Google, Amazon, Facebook, and other agents that conduct operations of transferring goods and providing services within Angola, undermine the VAT taxation. Angola should reflect this reality in its legislation.

c. Constraints to complying with tax obligations

According to the analysis conducted on the taxation of persons who conduct operations through e-commerce, we identified four issues that suppliers

[35] Mr. Kajesomo Kehinde, Deputy Director and the Head of Treaties and International Tax Policy Division of Tax Policy and Advisory Department, Federal Inland Revenue Service (FIRS).

list as contributing factors that may hinder compliance with tax obligations, regarding VAT in this country, namely:

Difficulty appointing a tax representative – Enterprises do not appoint a fiscal representative, in accordance with paragraph 1, article 33 (CIVA). This is due to several different reasons.

First, because it would be costly for enterprises who operate globally. Second, no entity in Angola is predisposed to represent them, to avoid the charge of solidary responsibility previewed on paragraph 3, article 33 (CIVA). Large multinationals carry out operations with significant sums of financial capital, and in case of non-payment of taxes, tax representatives do not have the economic capacity to be jointly liable for their tax obligations.

Non-application of the reverse charge mechanism – Taking into account that a considerable portion of their operations are carried out by persons without VAT activities, in relation to "Business-to-consumer" (B2C), and considering that these are not legally qualified/obliged to pay the tax in place of a non-resident taxable person, and that is not even possible from a practical point of view, when the operations are carried out by people without VAT payment options in the national territory.

Inability to create a bank account in Angola and pay in foreign currency – Multinational enterprises understand that there is no need to open a bank account in Angola, since transactions operate through international payment systems in multiple currencies and across different online payment methods. Enterprises prefer to pay in a foreign currency remotely, through a transfer to an account indicated by the Angolans authorities.

Complexity of VAT reporting and payment obligations – Non-resident entities want to comply to VAT reporting obligations, which are less complex and different from those existing for resident entities, in a simpler, unbureaucratic and rapid way. They prefer having an easy declarative model, without too many fields to fill, and payments that may be made remotely, through bank transfer from a bank not located in Angola.

d. Final considerations

International e-commerce is an irreversible global reality, and states must adapt and implement solutions to monitor and control such operations, especially in the domain of taxes. Operations carried out through electronic platforms are hard to monitor, and often belong to entities outside the national territory.

The process by which the country intended to register non-residents, namely those dedicated to providing electronic services (B2C), did not succeed because operators were not able to register in Angola. The difficulty of legal representation and non-use of the Kwanza as the transaction currency results in non-assessment of VAT and non-delivery of tax, culminating in non-revenue collection. Therefore, Angola understands that an effective regulation of the creation and adherence of registration needs to be approved by Presidential Decree. The Decree should encourage the fiscal compliance of economic operators from the digital economy sector without fiscal residency in Angola who provide services to consumers (B2C relations).

For the reasons given above, Angola thus understands the implementation and operational efficiency of the rules and underlying VAT mechanisms, ensuring that the tax be properly paid and delivered to the Angolan State that provides added value in tax collection, in the context of increasing e-commerce of goods and digital services for people.

2. Nigeria: Modernizing e-commerce taxation to meet international standards [36]

a. Background

There has been a giant leap in the volume of international trade and global consumption, as advancements in ICT have sped up the pace of globalization and digitalization, as well as the deregulation of many economies across continents.

Nigeria, like most developing economies, has fully embraced this digital revolution, which has opened its economy as a viable international market for multinational enterprises to sell their products, in a way that would be nearly impossible without incurring significant trading costs under the conventional economy. The digitalization of the economy has therefore encouraged e-commerce in Nigeria, by bringing producers and consumers closer, without the restriction of geographical barriers.

Despite the facilitation of cross-border trade through e-commerce, the absence of internationally agreed approaches to the taxation of cross-border trade in goods, services and intangibles has negatively impacted both businesses and government. It affects businesses that lack certainty on the tax treatment of cross-border digital transactions, while for government, existing tax rules have become outdated and incapable of providing much needed revenue assurance to market jurisdictions. Consequently, most e-commerce and digital transactions were no longer covered within the scope of the extant tax laws. In response, the national government of Nigeria has introduced various measures to harness this emerging tax base for revenue generation.

The destination principle has been the fundamental practice guiding VAT on cross-border transactions in Nigeria; the principle ensures that imports are taxed in the jurisdiction of final consumption, by exempting or zero-rating exports. It maintains a VAT system that is designed to preserve tax neutrality by ensuring only consumers bear the tax burden and not the intermediate transactions between businesses, while supporting the use of the reverse-charge mechanism for Business-to-Business transactions to reduce the burden of compliance for foreign suppliers.

b. The role of international standards in national policies for e-commerce taxation in Nigeria

For Nigeria, the OECD International VAT/GST Guidelines served as a basis for redesigning and implementing amendments to the VAT legislation, which had become outdated and challenging to implement, due to the evolution of business activities over time.

The reviews of the VAT law began in 2019 with amendments that were introduced through the annual Finance Acts. The primary objective of the legislative review was to further realign the legislative and administrative framework for VAT treatment of cross-border transactions with the recommended approaches

[36] Mr. Kajesomo Kehinde, Deputy Director and the Head of Treaties and International Tax Policy Division of Tax Policy and Advisory Department, Federal Inland Revenue Service (FIRS).

in the OECD International VAT/GST Guidelines, with the aim of reducing compliance and administrative burden, while blocking revenue leakages.

The legislative alignment and revisions were to be implemented through a three-pronged approach comprising:

- Amendments to the tax law.
  - Ensuring the law clearly reflects the destination principle.
  - Ensuring that VAT on imported low-value goods, services and intangibles are effectively captured.
  - Expanding and clarifying the application of various collection mechanisms.
- Issuance of relevant administrative guidelines to support compliance and administration.
- Deployment of technology and automation of administrative processes to aid compliance.

In view of this, the key policy consideration for Nigeria with respect to VAT collection on e-commerce transactions was that the principle of neutrality be maintained for the equitable treatment of conventional and electronic forms of commerce without unintentionally distorting international trade.

The following recommended approaches for VAT collection in the International VAT/GST Guidelines were taken into consideration in the policy design by Nigeria.

- Whether the VAT on cross-border business-to-business (B2B) supplies of goods, services and intangibles is best collected by the reverse charge mechanism with the appropriate proxy being the customer's location, which is identified from either direct use, direct physical delivery or the recharged entity.

For VAT on cross-border transactions in business-to-consumer (B2C) cases, VAT rules should aim to tax at the location where the final consumption takes place by identifying the place of the customer's usual residence for remote supplies of services and intangibles, while a proxy using the location where a service is performed would be appropriate for on-the spot supplies of services. The International VAT/GST Guidelines endorses a simplified registration and compliance regime as an effective and efficient collection mechanism for cross-border B2C transactions for services and intangibles. This approach requires a non-resident supplier to register and account for the VAT in a market jurisdiction, with the option of appointing an agent (third-party) to act on their behalf in carrying out registration or filing obligations.

- Information provided by the customer may be viewed as important evidence relevant to the determination of the jurisdiction of the customer's usual residence. This could include information usually collected by the supplier in the ordinary course of business, such as user profiles and the ordering process.

c. Key amendments to legal framework relating to VAT on e-commerce

- Section 2 of the VAT Act (as amended) now contains detailed rules that spell out when Nigeria is regarded to be the place of final consumption of a supply (place of supply rule).
- All exported goods and services are listed as exempted items, with provisions on mode of recovering the input. Note, that all imports are liable to VAT.
- Amendments to the definition of exported services to clearly indicate that the recipient of the service should reside outside Nigeria, but with the exclusion of services provided to the permanent establishment of a non-resident in Nigeria.
- Inclusion of the reverse charge mechanism in section 14(4) of the VAT Act to cover situations where a supplier is not required to include the VAT on its invoice and collect VAT, or where the supplier has defaulted in charging VAT. The position of the law is

now that the business recipient of the supply is required to self-account for the VAT by charging and remitting to the Federal Inland Revenue Service (FIRS). The reverse charge rule also applies, where a non-resident supplier in a B2B transaction fails to include or collect VAT on its digital supplies to Nigeria (covered under the Simplified Registration and Compliance Regime), in which case the Nigerian recipient of the digital supply is required to self-account and remit the tax due to the FIRS.

- Holistic revision of section 10 of the VAT Act as follows:
  - Section 10 (1) & (2) of the VAT Act requires a non-resident person who sends taxable supplies to Nigeria to register for VAT and issue a VAT invoice on its supplies. This replaces the previous restrictive requirement on the Non-Resident Supplier (NRS) to register with FIRS, using the address of the Nigerian business recipient that it has an existing contract with, for the purpose of correspondence.
  - Section 10 (3) and 14 (3) empowers the revenue authority (FIRS) to appoint the Nigerian recipient of a taxable cross-border supply, or any other person (including the non-resident supplier) to withhold or collect the VAT and remit the same. This amendment expands the tax authority's flexibility on the collection mechanisms used, especially for cross-border B2C supplies of services and intangibles. These provisions potentially empower the revenue authority to appoint the supplier, payment gateway, payment aggregator, businesses, financial institutions or any other relevant person for the purpose of collecting VAT on digital transactions.
  - In addition, a non-resident supplier has the power to appoint a representative to help with obligations of registration and issuing of invoice, but this does not discharge the non-resident supplier of its obligation to ensure due diligence and compliance with its obligations.
  - Section 10 (5) gives power to the revenue authority to issue detailed guidelines to give effect to the provisions on the collection of VAT on cross-border transactions, including the guidelines to introduce the simplified registration and compliance regime. This is supported by the provisions of Section 7 (2) of the VAT Act, which empowers the revenue authority to *"do such things as it may deem necessary and expedient for assessment and collection"* of VAT, giving the tax authority infinite administrative powers.

d. Guidelines on simplified registration and compliance regime

The Guidelines were developed in line with the administrative flexibility given to the revenue authority pursuant to the amendments to section 10 (5) of the VAT Act to make Guidelines for effective administration of the provisions of the section. The Guidelines lay an administrative and compliance framework for the implementation of the Regime in Nigeria and were developed in consultation with key stakeholders, including the African Tax Administration Forum (ATAF) technical committee on VAT, the Business and Advisory Committee of OECD (BIAC) and others. The Guidelines, to a large extent, follow the prescriptions in the 2017 International VAT/GST Guidelines and Mechanisms for the Effective Collection of VAT/GST.

The Guidelines apply to supplies, through digital means, of goods, services and intangibles by persons not physically present, located or represented in Nigeria to businesses or consumers in Nigeria. This in essence requires non-resident suppliers to collect and remit VAT on B2C digital transactions. The guidelines came into effect on 1 January 2022 with respect to supply of services and intangibles, while the application of the Guidelines to goods has been delayed until 1 January 2024.

Contents of the Guidelines include:

- general appointment provisions;
- scope of supplies covered under the regime, including illustrations;
- tax registration requirements and procedures;
- general obligations for the non-resident supplier in Nigeria;
- deemed supplier rules: where the supply is made or facilitated through an intermediary or intermediaries, the intermediary assumes all the tax responsibility of the Non-Resident Suppliers (NRS);
- the filing and remittance procedures for tax collected et al.

➤ Transitory rules were put in place to phase-in the regime and ensure seamless migration for existing registered non-resident suppliers. These include:

- Specific appointment of non-resident suppliers outside the regime of the guidelines, pursuant to the provisions of section 10 (3).
- Specially negotiated transitory period, with extensions, where specifically requested for or by the taxpayer.
- Authorized use of VAT compliant receipts in lieu of introduction of VAT invoices.
- Authorization for the reverse charge to operate for B2B transactions for services during the transitional period on the request of non-resident suppliers.
- The use of email correspondence for registration requests, returns filing and other compliance obligations, as a stop-gap measure in lieu of full deployment of IT system for online taxpayer registration and compliance obligations.
- Additional agency obligation, where platforms do not receive payment directly from the customer but are entitled to a commission on sales, the tax should be collected alongside the commission and remitted to the Service.

e. Administration processes put in place

Automation: The Service has automated administrative and operations processes and deployed several software and IT solutions to ease compliance, such as TaxProMax Solutions, VATrac, E-stamp duty, E-registration, E-receipt, E-filing, E-TCC, E-remittance, the Government Integrated Financial Management Information System (GIFMIS) among others, and ICT equipment for tax collection.

Establishment of Special Offices by the FIRS: The Service has established the Non-Resident Persons Tax Office to focus specifically on the collection of taxes on cross-border transactions and income of non-residents. The Service has also established the Intelligence Strategic Data Mining & Analysis to support the office and others with quality intelligence and data on the volume of transactions or activities carried out within the territory of Nigeria.

f. Conclusion

As a participant in the development of international rules and standards for the taxation of e-commerce and the digitalized economy, Nigeria has taken steps to align its domestic rules with international standards and adopt international best practices for effective administration of taxes and compliance support, especially in the area of VAT/GST. The steps that have so far been taken by Nigeria to support administration and compliance include policy changes that are sustainable and adaptable to the ever-changing socio-economic climate, building a solid legal framework through the amendment to tax laws, issuance of guidelines to aid compliance, digitalization of the tax administration, and establishment of special administrative offices focusing on the taxation of e-commerce and the digitalized economy.

Since 2019, Nigeria has steadily experienced a significant growth in tax revenues, which can be directly linked to these changes. The changes have helped rebuild the foundation on which its tax system was built, protecting the tax base and stemming revenue losses. As such, Nigeria can generate sustainable revenue to fund the activities of its governments at all levels

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3. Uganda: Taxation of the informal sector, challenges and opportunities [37]

a. Overview and Uganda experience

Uganda, like many developing countries, largely relies significantly on indirect taxes to finance its budget. Strategies to mobilize and optimize VAT are more likely to yield revenue in comparison to direct taxes since indirect taxes are linked to consumption of goods and services. Since 2011, the Uganda VAT statute under section 16(2) has had a clause designating Uganda as the place of supply for services provided to non-VAT registered persons by non-resident suppliers (Business to final consumers). However, the provision laid unutilized in the law books partly owing to a lack of clarity on whom the burden to account for the VAT fell. At the time, the business models used by digital platforms to provide services remotely to final consumers were not evident and as such it was not envisaged that this would lead to significant taxable economic activity. Fast forward to the advent of the COVID-19 pandemic and the preference and popularization of digital channels for provision of services, there has been a wide-scale adoption of e-commerce in the country.

Uganda moved quickly in 2021 to address the challenge of taxation of electronic services through the amendment of section 31 of the VAT statute to create an obligation for the non-resident suppliers of digital services as provided for under section 16(2) to file quarterly VAT returns. Accordingly, all services in scope are charged VAT by the non-resident service provider and the proceeds remitted to Uganda Revenue Authority (URA).

[37] Mr. Anthony Kibirige, Team leader for international tax and transfer pricing, Uganda Revenue Authority.

URA further clarified that the appointment of tax representatives by non-resident service providers as referred to under the Tax Procedures Code Act is optional. This, together with other administrative simplifications, enabled the non-resident service providers to register and start accounting for tax. Uganda is still in the early days of implementation and from a very few early adopters; tax remitted amounts to approximately US$ 2,500,000 after one year.

The country faces a challenge of a huge informal sector in a bid a mobilize indirect taxes. Many businesses choose to remain informal and/or not comply with tax duties and obligations. Digital tools further exacerbate this challenge, making visibility of commercial transactions more convoluted. This raises a number of issues for informal economic actors who use these channels as their preferred means for transacting. The adoption of digital channels of commerce in the place of the physical provision of goods and services increases the VAT gap. Compliance actions thus need to be directed towards transitioning formerly informal businesses to the formal sector. This should take place in tandem with the development of an enabling VAT collection mechanisms that optimize collections of VAT on services provided through digital channels.

b. Business informality

The Uganda Ministry of Finance Planning and Economic Development (MoFPED) estimates that despite previous formalization efforts, the informal sector accounts for about 51 per cent of the total GDP in Uganda (MoFPED, 2019). While the term "informal business" is not defined under Uganda Tax Law, it encompasses three profiles and dimensions of informality: legal, fiscal, and labour.

The term "legal informality" is used to refer to whether the business is registered or not with the Local Governments (LG) and/or Uganda Registration Services Bureau (URSB). "Fiscal informality" indicates the extent to which informal businesses pay taxes to Uganda Revenue Authority (URA). Fiscal informality may include businesses that have bank accounts and maintain bookkeeping. "Labour informality" reflects whether contracts and benefits are made available to employees. (EPRC, 2022)

In a bid to formalize businesses, the Uganda Revenue Authority (URA) has in the past undertaken joint efforts with the URSB and LG through the Taxpayer Register Expansion Programme (TREP) with the aim of onboarding more businesses to the tax register. As a result, new businesses get a Tax Identification number (TIN) through which they submit tax returns and make payments to the URA. However, since the registration is not voluntary, this does not necessarily result in the onboarding of value clients (those who file a return and make payments) for the URA.

c. VAT revenue productivity

The Uganda tax structure provides for VAT that requires taxpayers who meet a UGX 150 million annual turnover (about US$ 40,000) to mandatorily register for VAT purposes. This threshold applies to non-resident providers of electronic services and to some entities who have customers in Uganda and have yet to register. Non-registration may be due to insufficient turnover, e.g., the turnover does not exceed the registration threshold of UGX 150 million.

However, the revenue productivity of Uganda's VAT, as measured by its "C-efficiency" — the ratio of VAT revenue to the product of the standard rate and final consumption, is low when compared with other Sub-Saharan African countries. (Hutton et al., 2014).

The Economic Policy Research Centre (EPRC) paper on the Value Added Tax (VAT) Gap Analysis for Uganda (EPRC, 2018) provides a comprehensive quantitative analysis of the gap between potential revenues and actual VAT collections, known as the compliance gap. The paper also estimates the policy gap, which refers to the impact on the potential yield of the tax due to exemptions, zero ratings, and other reductions to the potential tax base.

The compliance gap is estimated to be between 30 per cent and 39 per cent of potential VAT revenues during the period 2009/10 to 2016/17 and peaking in 2010/11. The estimated gap is higher than the typically observed levels in Sub-Saharan countries. The relative sizes of the compliance gap (2 to 3 per cent of GDP) have stayed larger than the policy gap. The policy gap in Uganda on the other hand is equivalent to 1 per cent of GDP (EPRC, 2018).

The above studies aim to explain the effect of a large informal sector on the outcomes of VAT revenue in Uganda. However, the changes in the VAT law that require non-residents to collect VAT on electronic services would provide an opportunity to optimize collections since they affect informal sector players from whom government would originally obtain tax revenues only upon formalising their businesses.

d. Electronic services - Domestic and cross-border compliance

The VAT statute under section 16(5) defines electronic services as services provided or delivered remotely. Such services, when provided by domestic suppliers, are subject to VAT within the ordinary course of business and largely domestic providers of electronic services are registered with the URA. The URA has been operating an electronic fiscal receipting and invoicing solution for all domestic VAT registered taxpayers since 2020. Under this regime, sales made to both registered and non-registered taxpayers are issued fiscal invoices and the related VAT accounted for in the service provider's return every month. The recipient business claims input tax for the supply. Accordingly, informal sector players are the final recipients of services and, by virtue of not being registered, are not able to pass on the VAT burden through claiming input tax.

This is not the same for electronic services provided by non-resident suppliers. Once a registered taxpayer receives electronic services provided by a non-resident supplier, they are required to self-charge and account for such services in their VAT return. The non-resident supplier will however be required to charge VAT on Uganda customers who are not registered for VAT. The URA has devised an Access Programming Interface – API – to enable non-resident suppliers of electronic services to validate the VAT registration status of a customer prior to charging VAT on the services provided. Given that informal sector players are not VAT registered, they will be subjected to VAT upon receiving services from the non-residents.

The URA has also undertaken a sustained stakeholder engagement with the non-resident suppliers to provide certainty on the application of the local registration, return filing and payment regime that is aligned to international best practices of simplification.

e. Challenges and opportunities

Engagement with non-resident suppliers, while providing the appropriate infrastructure to enable offshore registration, filing and payment, requires an IT lift underpinned by the development of new processes tailored to this category of taxpayers. As such, in addition to dedicated client response teams, there is a need to have dedicated IT teams to analyse and design the new business processes and provide for the appropriate IT platforms. The URA leveraged existing automated processes to provide for online registration, filing and payments by the non-resident suppliers by deploying the same team of IT engineers and modification of existing business processes to tailor them for the purposes of the non-resident suppliers of electronic services.

When new law is enacted, the politicians and government treasury expect it to take immediate effect. However, there is a need to engage non-resident suppliers and provide certainty on how the new regime works in the jurisdiction. New processes and systems should be put in place as explained above. Accordingly, lead time must be provided (usually 6 to 12 months from initial engagement).

Jurisdictions should update their laws not only to ensure certainty for non-resident suppliers but also to provide for simplification in accordance with international best practices. For example, non-residents usually charge their clients in foreign currency and should ideally remit taxes due in the same currency. Uganda is considering amending its Public Finance Management Act to allow non-resident suppliers to remit taxes in a foreign currency.

There is an opportunity to utilize data collected from non-residents to enhance domestic compliance by registered taxpayers. While the VAT law requires registered taxpayers to self-charge and account for VAT on electronic services received from non-resident suppliers, it is believed that there are low compliance levels in this regard. The URA has designed a compliance regime under which non-residents will provide transaction level data about their clients on whom no VAT charge has been applied on the sale (since they are registered for VAT). If these measures result in enhanced compliance levels, they can provide a benchmark for improved compliance for other services provided by non-resident suppliers other than electronic services.

f. A balanced tax compliance approach

Jurisdictions ought to have a balanced tax compliance approach that considers the country's revenue mobilization initiatives while providing flexibility on when certain aspects of the implementation can be relaxed/postponed. Uganda is keen to reap long-term benefits of innovation that are driven by digitalization ultimately leading to increase in economic productivity and creation of new forms of employment. As an example, this has enabled the rapid and widespread use of mobile money as a means of exchange, thereby providing financial inclusion to a wide sector of the population that would otherwise have remained unbanked.

Uganda achieved this balance through having intense engagement on both bilateral and group basis with the non-resident suppliers to minimize lead time before increased revenues can be realized. Online registration, filing of returns and making payments has been enabled through the URA portal. All processes concerned with the compliance of non-residents have been posted on the URA portal in form of Frequently Asked Questions. During the engagements with the non-residents, workable time frames were agreed through which the players would register, file returns, make payments and share transactional details with the URA.

g. Conclusion

E-commerce and the adoption of various electronic services delivered through digital platforms has required governments to consider non-resident suppliers as collection agents for indirect taxes. This has the potential to optimize tax collections from both the formal and informal sector. Thus, there is an urgent need to strengthen the domestic regulatory and policy mix to reap the full advantages of this opportunity.

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4. Cambodia: E-commerce tax law and technology challenges [38]

a. Introduction

In recent years, the digital economy in Cambodia, particularly the e-commerce segment, has grown rapidly. Internet access, affordability, and uptake have increased alongside a growing and technologically sophisticated consumer base. The Royal Government of Cambodia (RGC) has implemented a series of broad-based reforms to strengthen the digital economy and achieve economic growth. These objectives are enshrined in the national development agenda and further articulated in the Pentagonal Strategy Phase I, Cambodia Digital Economy and Social Policy Framework 2021-2035, National Strategic Development Plan 2019-2023, Industrial Development Policy 2015-2023, Cambodia National ICT Masterplan 2020, and the Cambodia Trade Integration Strategy 2015-2025. By introducing various digital policy initiatives, the RGC is taking full advantage of the opportunities arising from the Fourth Industrial Revolution (4IR), while also leveraging the advances in the domestic digital economy to improve the economic structure of the country. E-commerce presents unique opportunities to achieve economic diversification and identify new sources of growth. Likewise, the RGC recognizes that developing the e-commerce sector in Cambodia requires the participation of all stakeholders to further contribute towards the country's economic development and the transition to a digital economy.

To respond to the context of the digital economy and Cambodia's growth potential in the Fourth Industrial Revolution, the Ministry of Commerce developed a National E-Commerce Strategy, which guides e-commerce sector development under a harmonized framework that recognizes the importance of this sector as potential revenue growth.

b. Responding to the tax challenges of the digitalization of the economy

To further the achievement of the collective goals of sustaining economic growth amid fair competition and social justice and achieving the national development objectives and the Sustainable Development Goals, the RGC developed a new Revenue Mobilization Strategy for 2019–2023. This strategy strengthens Cambodia's revenue administration and tax collection sustainability. In line with Revenue Mobilization Strategy 2019-2023, the RGC has undertaken a number of reforms to strengthen the capacity of the

[38] Contribution drafted following the interview of Dr. Eng Ratana, General Department of Taxation, Cambodia.

revenue collection administration, continue strengthening governance, promote the quality, efficiency and effectiveness of services, and formulate tax and non-tax policies to promote business environment, competitiveness, and economic diversification. The development of the tax administration modernization agenda for 2019–2023 placed the Ministry of Economy and Finance (MEF) at the forefront of this agenda to meet the RGC's anticipated revenue targets and other development objectives for the tax system. Under this strategy and in accordance with the Law on E-Commerce, the General Department of Taxation (GDT) of the MEF is developing a broad set of policy and administrative measures, including a reform and clarification of the tax implications surrounding e-commerce transactions.

c. Indirect taxation and e-commerce

The rapid development of the e-commerce sector, and the prosperity it can bring, has created a great impetus for the development of pragmatic legislative responses in the field of taxation. Following the enactment of the Law on E-Commerce in 2019 (Law on E-Commerce) and the accelerated uptake in and demand for e-commerce due to the COVID-19 pandemic, the RGC has sought to clarify the tax revenue potential and implications surrounding e-commerce transactions. The RGC issued Sub-Decree 65 ANKr.BK dated 08 April 2021 and Prakas 542 MEF.PK dated 08 September 2021 on the rules and procedures for the implementation of VAT for e-commerce transactions, which cover the supplies of digital goods or services via electronic systems, or any e-commerce activities carried out by non-resident suppliers who do not have a permanent establishment in the Kingdom of Cambodia, and resident taxpayers who receive the supplies of digital goods or services or any e-commerce activities from non-resident suppliers.

The introduction of VAT on e-commerce provides the GDT a way to collect VAT from the consumers who are purchasing digital goods and digital services from non-resident taxpayer via electronic systems. The current VAT in Cambodia was introduced in 1999 and it requires local suppliers to charge a 10 per cent VAT on their invoices for the supplies of goods and services to their customers. However, in today's emerging digital economy environment, to ensure a level playing field and fair competition between local suppliers and non-resident suppliers who do not have a permanent establishment in Cambodia, VAT should also be charged at a rate of 10 per cent on the digital goods and digital services supplied by non-resident suppliers into Cambodia.

Under Prakas 542 MEF.PK a taxable person is defined as:

- A non-resident taxpayer, including an electronic platform operator, who supplies digital goods or digital services or any e-commerce activity into the Kingdom of Cambodia that meets the Simplified VAT Registration requirement - annual turnover from 250 million Riels (approximately US$ 62.5K) or more, or - expects to have any 3-month-consecutive turnover period completed in the current calendar year from 60 million Riels (approximately US$ 15K) or more.
- OR a self-assessment taxpayer who receives the supply of digital goods or digital services or any e-commerce activity from non-resident taxpayers.

This measure has significant potential to further increase national budget revenue and put local e-commerce operators on an equal footing with larger international competitors.

d. Key features of Sub-Decree 65 and Prakas 542

The regulatory updates were enacted following extensive engagement with the private sector and the establishment of working groups with registered taxpayers in Cambodia who transact with non-resident taxpayers.

The following types of taxpayers are required to comply with Sub-Decree 65 ANKr.BK and Prakas 542 MEF.PK:

Non-resident taxpayers

Non-resident taxpayers (suppliers of digital goods and digital services for the purpose of these regulations), are those who do not have permanent establishments (PE) in the Kingdom of Cambodia, and who supply digital goods or digital services or any e-commerce activities to customers in the Kingdom of Cambodia. These regulations also apply to non-resident electronic platform operators.

Self-assessment taxpayers

(Self-assessment taxpayers (tax registered customers of e-commerce for the purpose of these regulations) in Cambodia are those who receive digital goods or digital services, or any e-commerce activities from non-resident taxpayers.

The threshold for the Simplified VAT Registration has been set to further achieve a level playing field in an equitable and transparent manner. A non-resident taxpayer who provides digital goods, digital services, or any e-commerce activities to Cambodian customers with annual turnover from 250 million Riels (approximately US$ 62.5k) or more or who expects to have any 3-month-consecutive period completed in the current calendar year from 60 million Riels (approximately US$ 15k) or more shall have the obligation to complete registration for the Simplified VAT Registration within 30 days after the turnover threshold has been met. The Simplified VAT Registration is for VAT purposes only. This means that once non-resident taxpayers register for VAT, they will need to invoice customers in Cambodia for B2C and B2B transactions. Then the non-resident taxpayer must file monthly VAT returns and pay the applicable amount of VAT in Khmer Riel currency to the tax authority in Cambodia.

A non-resident taxpayer, who is required to register for the Simplified VAT Registration in Cambodia, shall complete the prescribed VAT Application Form and is not required to have a PE in Cambodia to register for Simplified VAT Registration. The registration process could be done via online platform. Prescribed obligations of the monthly VAT return and payment for non-resident e-commerce providers who are registered under the Simplified VAT Registration regime entail that if non-resident entities fail to register for VAT, whether voluntarily or at the invitation of the tax authority in Cambodia, the tax authority can unilaterally register the non-resident entity.

Upon registration, the non-resident entity is required to issue invoices for each transaction that it has with consumers resident in Cambodia in accordance with Instruction No. 2520 GDT dated 24 January 2023 on the Change on the Implementation of VAT on E-commerce transaction. This includes both B2C and B2B transactions. In B2C transactions, the non-resident entity is required to collect a 10 per cent VAT from the consumer and then declare and pay the amount of VAT charged to the GDT. In B2B transactions, the self-assessment taxpayer shall collect a 10 per cent VAT under the Reverse Charge mechanism and then declare and pay the amount of 10 per cent VAT monthly to the GDT.

The Reverse Charge mechanism increases the compliance obligations for residents in Cambodia who transact with non-resident entities. For example, the mechanism entails that a self-assessment taxpayer, who receives digital goods, digital services, or any e-commerce activities from a non-resident taxpayer, requiring VAT to be filed as a tax return and paying the applicable VAT to the tax administration on behalf of the non-resident taxpayer for the taxable value. A self-assessment taxpayer is required to account for the applicable VAT on behalf of the non-resident taxpayer under the Reverse Charge mechanism regardless of whether or not the non-resident taxpayer has registered for the Simplified VAT Registration in Cambodia. Small taxpayers in the self-assessment regime are exempted from the Reverse Charge obligation for five years from the effective date of the sub-degree.

e. Conclusion

With e-commerce sales in Cambodia forecast to reach US$ 313 million by 2025, the RGC has taken bold steps in preparing and implementing tax-related legislative and policy action: Sub-Decree 65 ANKr.BK and Prakas 542 MEF.PK. The RGC continues to place emphasis on strengthening laws and regulations on existing taxes and strengthening the management of tax revenue collection. Since the introduction of VAT on e-commerce in April 2022, the GDT collected US$ 43.9 million for the period April to December 2022. In the 2023, e-commerce VAT income totalled $75.5 million. Overall, Sub-Decree 65 ANKr. BK and Prakas 542 MEF.PK have thus enabled Cambodia to expand its tax base in a transparent and equitable manner and further promote economic growth.

5. Malaysia: Alternative tools used to tax e-commerce [39]

a. Introduction

Malaysia has witnessed rapid expansion and growth of online services such as food delivery services and fresh produce delivery services through digital platform service providers, emerging during the COVID-19 pandemic. Driven by a boom in smartphone ownership and increased connectivity, electronic commerce (hereafter e-commerce) is expanding quickly. Digital Malaysia indicated that in 2020, a total of 16.29 million people, or almost 50 per cent of the population, regularly purchased online, while 82.9 per cent of mobile users did the same. Consumers are attracted to the level of product quality, price benefits, selection, and accessibility of reviews. Furthermore, online platforms entice consumers by offering exclusive discounts, free delivery, ease of use, and promotions from online retailers.

Due to its vibrant digital economy and established infrastructure for digital technologies, Malaysia is becoming a desirable market for e-commerce in Southeast Asia. According to GlobalData's E-Commerce Analytics, e-commerce payments in Malaysia are expected to increase at an estimated compound annual growth rate of 18.3 per cent, from MYR28.5bn (US$ 7.1 billion) in 2021 to MYR55.7bn (US$ 13.8 billion) in 2025.

b. Guidelines on Taxation of Electronic Commerce Transactions in Malaysia

The guidelines were published by the Inland Revenue Board of Malaysia (IRBM) on 13 May 2019. They offer guidance on fundamental tax matters and the income tax treatment for e-commerce transactions and should be read together with the Income Tax Act 1967 (ITA 1967), other relevant legislation, and current legal procedures.[40]

[39] Mr. Md Hasmalizan Hussin, Assistant Director, Digital Economy Audit Section, Tax Compliance Department and Ms. Nur Idatun Nadia Mohamad Noor, Assistant Director, Digital Economy Audit Section, Tax Compliance Department, Inland Revenue Board of Malaysia (IRBM).

[40] The general provisions and interpretations of the ITA 1967 will be applicable, since there are no specific provisions under the ITA 1967 which address e-commerce transactions.

IRBM adheres to the neutrality principle, which means that both conventional business and e-commerce transactions (e-CT) are subject to the same tax treatment. As a result, taxpayers who are in similar circumstances and engage in similar transactions ought to receive the same tax treatment. In the context of e-CT, any income is deemed to be derived from Malaysia if it is associated with any activities in Malaysia, regardless of whether that income is received in Malaysia or otherwise.

c. Key elements of the legal framework

In the case where a Double Taxation Agreement (DTA) is applicable, the test to determine whether Malaysia has the taxing rights over the business income will be based on the Permanent Establishment (PE) concept. According to Section 2 of ITA 1967, "business" is defined to include profession, vocation and trade and every manufacture, adventure, or concern trade, but excludes employment. This would involve operating a business via a company or an individual performing or providing services.

In reference to Practice Note No. 1/2018 – Tax Treatment on Digital Advertising Provided by A Non-Resident (published by IRBM in 2018), the tax treatment on payment to non-residents in relation to digital advertising is dependent on the facts of each case whereby:

- The non-resident has no permanent establishment (PE) (where a Double Taxation Agreement applies) or where there is no business presence in Malaysia, payment is subject to withholding tax under:
  - Section 109, Income Tax Act 1967 (the Act), if the payment received is a royalty income under the Act; or
  - Section 109B of the Act, if the payment received is an income within the scope of paragraph 4A(ii) of this Act.
- If the non-resident has a PE or a business presence in Malaysia, the payment received constitutes a business income, which is derived from Malaysia and will be taxed under paragraph 4(a) of the Act.

For further elaboration, special classes of income received by a non-resident person described in Section 4A of the ITA 1967 are subject to withholding tax in Malaysia under Section 109B of the same Act. Classification of special classes of income in relation to e-CT are any amount paid in consideration of any advice given, or assistance or services rendered in connection with the management or administration of any scientific, industrial, or commercial undertaking, venture, project, or scheme.

Under Section 109 of ITA 1967, any royalty paid to a non-resident in relation to e-CT will be subjected to withholding tax. The definition of "Royalty" has been amended, effective from YA 2017 where the word "software" has been added to the definition of "Royalty." It was previously mentioned in the ITA 1967 to include the use of or the right to use software, any transmission through satellite, payment in respect of total or partial forbearance, the use of, or the right to use know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill and use or the right to use licences with regards to some or all of the part of the radio frequency spectrum. In short, e-CT will be taxed under paragraph 4(a) of the ITA 1967 if the income is deemed to be derived from Malaysia, while a non-resident person who derives income from e-CT may also be deemed to derive that income from Malaysia in relation to special classes of income and royalty.

In addition to discussing the tax issues at hand and suggested remedies for e-commerce, it is important to look at e-commerce's environment and the laws that apply to it.

d. Alternative tools used to tax e-commerce

There are five initiatives or assisting tools used to tax e-commerce in Malaysia.

1. Daily monitoring of Social Media/Website.

Monitoring of social media/websites conducted on a daily basis, which focuses on:

(a) Online business activities on websites involving e-commerce platforms and social media.

(b) Influencer (Instafamous, Youtuber, FB Live Video).

(c) Video Gamers and;

(d) Any potential information/content available on websites and social media which points to non-compliance with the Income Tax Act of 1967

2. Informartion Gathering Activities.

Information gathering describes the process of requesting information from potential informants, from government and private agencies. The objective is to expand the Malaysian tax base through the information provided by current and new informants in order to promote tax compliance by empowering the data warehouse with information that can support IRBM's compliance and enforcement activities.

3. Audit

Analysis of data is obtained from daily monitoring activities and informants in Initiative 2, and selected cases are channelled to the Branch offices for audit purposes. Besides that, a General Audit Review Task Force on the e-commerce platform is established for the purpose of reviewing tax reporting and at the same time obtain information from the users of the platform involved.

4. Focus on the Gig Economy

The gig economy has radically transformed and disrupted numerous sectors including transport, tourism, and hospitality. The new reality has seen the entry into the market of considerable, and still growing, numbers of new economic actors carrying out commercial activities in new ways that may not yet be captured by existing VAT/GST rules and administrative practices. The focus should then be on reviewing existing VAT/GST frameworks to determine whether they are sufficiently equipped to capture this new economic reality efficiently, notably to protect VAT/GST revenue. Global Online Workforce (GLOW) announced by the Malaysian government is an initiative introduced by Malaysia Digital Economy Corporation that provides a platform for Malaysians to promote their service or expertise to the global market online. To date, there are more than fifty-four thousand Malaysians who have participated in the program. GLOW has thus created new opportunities for Malaysians, requiring enhanced compliance and administration.

5. Nudging Activity

IRBM has used a nudging approach to influence the behaviour of online traders. Through Initiative 1, social media and website monitoring is done by the Digital Economy Audit Section Officer every day. This monitoring involves sending messages or e-mails to e-commerce merchants regarding their responsibility to submit the Income Tax Declaration Form on time.

e. Emerging solutions

- Electronic invoicing (e-Invoicing)

Malaysia needs to plan new methods to tax e-commerce, to fully realize the income potential from the growth of the digital economy. According to the Ministry of Finance's Pre-Budget Statement 2023, electronic invoicing (e-Invoicing) will become a reality in Malaysia. Moving forward, the government has announced a phased plan to implement e-Invoicing in the country, as part of its strategies to increase tax revenue.

E-Invoicing will be a relevant and key component of the country's digital transformation to encourage growth of the digital economy. The implementation of e-Invoicing will improve the quality of tax services, reduce compliance costs and subsequently allow tax administration operations to be carried out more efficiently.

This e-Invoicing initiative will also support the use of Tax Identification Numbers (TIN), which has been implemented in Malaysia from 2022 onwards as a measure to expand the income tax net.

- Two Pillar Approach

According to the 2023 Pre-Budget Statement, multinational enterprises (MNEs) depend heavily on digitalization. Therefore, existing tax policies need to be reviewed to prevent revenue leakage and profit shifting. In addressing these challenges, the Government and OECD are currently discussing the implementation of taxation on the digital economy under the BEPS Action Plan 1 and have agreed to implement the Two-Pillar approach, namely Pillar 1 and Pillar 2.

Pillar 1 focuses on the distribution of taxing authority and seeks to review the profit allocation and nexus rules for a nation that was previously subject to the application of the concept of permanent establishment, either through domestic legislation or that has been agreed upon through a bilateral taxation agreement subject to prescribed conditionsincluding the possibility of introducing Qualified Domestic Minimum Top-up Tax (QDMTT) under the Pillar 2.

Pillar 2, to ensure equal opportunity for all nations to attract foreign direct investment, imposes a minimum global effective tax rate of 15 per cent. It intends to stop detrimental tax planning that could result in profit transfers to nations with low tax rates and the leakage of tax bases, according to predetermined conditions. Malaysia is currently reviewing technical details of these two pillars.

f. Key takeaways

The growth of e-commerce helps to advance international commercial dealings and removes some related hurdles, but it also presents a new issue for global revenue authorities. E-commerce has had a large impact on the trade of goods and services. It has increased the quantity of global trade, which has led to a rise in taxable income. This points to an opportunity to increase tax revenue by the government.

However, earlier discussions on alternative tools and methods, as well as e-commerce characteristics, have shown that the tax authority has substantial difficulties when handling e-commerce transactions. Despite the rich and intensive discussions on the taxation of e-commerce, Malaysia is still improving its efforts to tax e-commerce income.

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6. Singapore: Singapore's Implementation of the Overseas Vendor Registration Regime [41]

a. Introduction

The advent of technology has fuelled the growth of e-commerce by allowing businesses to sell their products across the globe to consumers without the need for a shop-front. Consumers in Singapore now purchase a vast array of goods and services from overseas suppliers directly or through intermediaries such as electronic marketplaces.

On the Goods and Services Tax (GST) front, tax rules need to be updated to be able to charge GST on such goods and services. Prior to the change, GST was chargeable on services only where the supplier resided in Singapore. The rise of e-commerce had exacerbated a gap where services supplied by local suppliers in Singapore were subject to GST whereas those supplied by overseas suppliers were not. In addition, Singapore's import De minimis threshold of US$ 400 meant that any importation of goods below this value by air and post (i.e., low-value goods) were not subject to GST.

To level the playing field between local and overseas suppliers, as well as ensure the resilience of our GST system in a growing digital economy, Singapore first implemented an Overseas Vendor Registration ("OVR") regime to tax imported digital services from 1 Jan 2020 in the context of business-to-consumer[42] ("B2C") transactions. From 1 January 2023, the OVR regime was extended to B2C imported non-digital services and low-value goods.[43]

b. Scope

With the implementation of the OVR regime, all low-value goods and remote services (i.e., digital and non-digital services) supplied to Singapore consumers would now be subject to GST. Remote services are defined as any service where there is no necessary connection between the physical location of the recipient and place of physical performance at the time of performance of the services supplied to consumers in Singapore. Examples include sale of e-books, online streaming services and distance learning classes.

However, remote services exclude services whose consumption require the service recipient to be physically present at the same location and at the same time as the service provider when the service is physically performed (e.g. passenger transportation and restaurant or catering services).

41 Mr. Samuel Dinesh Mathew, Senior Manager, GST Division – Large Businesses, Inland Revenue Authority of Singapore and Ms. Anna Poh, Principal Tax Auditor, Inland Revenue Authority of Singapore.
42 Consumers refer to both individual consumers as well as non-GST registered business.
43 From 1 January 2020, a reverse charge mechanism was also introduced to tax all business- to-business ("B2B") imported services supplied by overseas suppliers to GST-registered businesses not entitled to recover their input tax in full. The reverse charge mechanism was expanded to tax B2B supplies of low-value goods from 1 January 2023.

c. Key factors of OVR Regime

Singapore's OVR regime has three key features:

- Intermediaries regarded as the supplier of remote services and low-value goods – In the e-commerce space, it is common for suppliers to market and sell their products through intermediaries such as electronic marketplace operators and redeliverers (for low-value goods). These intermediaries are well-positioned to collect and account for GST, on behalf of their underlying suppliers. Therefore, these intermediaries may be regarded as the supplier for remote services and low-value goods under Singapore's OVR regime.
- A two-tier GST registration threshold – OVR vendor[44] are required to register under the regime if, in a 12-month period, their global turnover exceeds or is expected to exceed S$ 1 million and they make or expect to make B2C supplies of remote services and low-value goods to customers in Singapore exceeding S$ 100,000.
- Simplified pay-only registration regime – To keep compliance costs low and encourage greater voluntary compliance, overseas OVR vendors are registered under a simplified pay-only regime where only the output tax collected by OVR vendors is reported with no input tax claims allowed. The simplified pay-only registration regime provides for reduced GST reporting and documentation requirements. These include the filing of simplified GST returns with fewer fields, no requirement to appoint a local agent in Singapore for the handling of tax matters and no additional invoicing and price display requirements beyond usual business practices.

d. Key Policy Design Considerations and Implementation Strategies for OVR Regime

Singapore's key policy design considerations were to ensure that our GST rules were clear and simple to ease compliance. In addition, our OVR regime is generally aligned with international VAT/GST practices, as well as how businesses operate in the e-commerce space.

We also drew references from similar OVR regimes in other tax jurisdictions and the international VAT/GST guidelines of the Organization of Economic Co-operation and Development (OECD). We have therefore adopted common key features, such as the simplified pay-only registration regime and regarding intermediaries to be suppliers of remote services and low-value goods. To reduce the compliance burden of international businesses that register for GST/VAT rate in multiple jurisdictions, key policy parameters, such as our basis for determining the place of taxation for remote services/ low-value goods, as well as the definition of digital and remote services, are largely consistent with international guidelines.

A key implementation strategy was also to announce the implementation of the OVR regime and its subsequent extension early, almost two years before the effective dates, to give businesses ample time to prepare for the new regime. This also gave IRAS sufficient time to consult with industry and make modifications to the regime's rules based on feedback received

To ensure that the views of businesses were considered in the design of our OVR regime, Singapore conducted extensive consultations with businesses and trade associations through numerous dialogues, meetings and seminars. These consultations drew significant interest from the business

[44] OVR vendors include local and overseas suppliers, electronic marketplace operators and redeliverers who supply remote services or low-value goods to consumers in Singapore.

community and many comments and suggestions were received. Many of the inputs received were incorporated into our design parameters, to reduce compliance costs for businesses. For example, insofar as it does not compromise the integrity of our regime, we gave certain options to OVR vendors that they can elect to facilitate compliance. Establishing a high GST registration threshold will also ensure that businesses that do not make significant sales to Singapore consumers will not come within the scope of tax.

e. Key Challenges to Implementation of OVR Regime

In planning for implementation, we prioritized addressing the following two key challenges.

- Readiness of businesses for the implementation of the OVR regime.
- Timely registration and compliance by OVR vendors.

To address the first challenge, the implementation of the OVR regime and its subsequent extension were announced early, as described above, and guidance for businesses on the proposed rules were also published on our website at the same time. This ensured that businesses had sufficient lead-time to familiarize themselves with the rules and prepare their resources to update systems and processes in the lead-up to implementation. IRAS also engaged key OVR vendors (e.g., electronic marketplace operators and transporters who facilitate the sale of low-value goods) to understand their needs and help them in their preparation for the changes. In addition, for low-value goods, IRAS set up a joint task force with Singapore Customs and the Immigration and Checkpoints Authority of Singapore to work out the operational processes for the clearance of low-value goods. A series of outreach activities, such as electronic direct mailers were sent to affected taxpayers, such as OVR vendors and transporters, to provide clarity on the changes in importation procedures for low-value goods from 1 January 2023.

To address the second challenge, we identified potential registrants using third party financial data and publicly available information. Extensive outreach efforts were conducted to educate these potential registrants on their registration obligations. IRAS also reached out to business associations and tax agent firms to raise awareness of our OVR regime and to encourage early registration. For key stakeholders and large businesses who were liable to register under our OVR regime, IRAS provided one-to-one support to them to support their GST registration and implementation efforts.

f. Conclusion

Overall, the implementation strategies employed have proven to be effective in addressing our anticipated challenges. Our OVR registrants include all of the large OVR vendors and marketplace operators that have registered under our regime. In Singapore's experience, designing clear rules that minimize extraterritorial compliance burden for businesses, working closely with key stakeholders to understand their needs and providing sufficient lead time prior to implementation date are critical elements to facilitate the successful implementation of an OVR regime. Moving forward, Singapore will continue to keep abreast of international developments in the e-commerce space and ensure that our OVR regime remains aligned with international VAT/GST guidelines.

7. Thailand: VAT on Electronic Services in Thailand[45]

a. Introduction

Thailand officially launched a new regime for value-added tax (VAT) on electronic services in September 2021. This regime stipulates that non-resident electronic service providers and electronic platforms, who receive income of more than 1.8 million Thai Baht per year from providing electronic services to non-VAT registered customers in Thailand, shall register for VAT, file VAT returns, and pay VAT.

Of note, the amount of VAT payment is based on output tax without input tax deduction. Furthermore, the electronic service providers and electronic platforms are not allowed to issue a tax invoice and are not required to keep input tax report.

b. Introduction of the VAT for electronic services system:

The VAT for electronic services system (VES) is a digital platform provided by the Revenue Department of Thailand for non-resident electronic service providers and electronic platforms to submit their VAT returns online. The VES was implemented to improve tax collection and to make it more convenient for non-resident electronic service providers and electronic platforms to fulfil their tax obligations. This platform provides a simplified one-stop service for foreign e-service operators. The platform also allows non-resident e-service operators to register, submit VAT returns, pay VAT, request VAT refunds, and submit various VAT documents to the Revenue Department. To use the VES, the electronic service providers and electronic platforms must register with the Revenue Department through this platform and obtain a username and password.

c. Effective means to communicate tax changes

The Revenue Department has disseminated information about the legislation to both business operators and the public through various media channels, including the Revenue Department's website and online social media platforms such as Facebook. This continuous dissemination of information aims to ensure widespread awareness and understanding of the VAT regulations outlined in this legislation.

The Revenue Department has organised meetings and directly communicated with foreign business operators to foster understanding. These interactions took place even before the legislation was officially announced in the Royal Gazette, and we continue to maintain ongoing communication and understanding with foreign business operators to this day. This proactive approach helps establish clear lines of communication and ensures that foreign operators have a comprehensive understanding of the legislation.

On the system aspect, the Revenue Department has held meetings to listen to feedback with foreign business operators. We have also provided mock-ups of the simplified VAT registration and VAT return filing system to targeted business operators, allowing them to express their

45 The Revenue Department of Thailand.

opinions and provide suggestions for the system. In addition to gathering feedback from business operators, the Revenue Department has also conducted joint meetings with large tax consultancy firms in Thailand. These firms serve as tax advisors to foreign e-service operators, ensuring their understanding of this legislation and providing accurate guidance and recommendations to foreign business operators. The Revenue Department has also coordinated with foreign chambers of commerce in Thailand to foster widespread awareness and understanding of compliance with this legislation. This collaboration aims to ensure that a broad range of stakeholders are informed about and able to adhere to the regulations outlined in this legislation.

d. Conclusion

As of 5 May 2023, there were 151 non-resident VAT registrants on the VES. The VAT collection on e-services has accumulated a total of 10.78 billion Thai Baht since the system was implemented. In 2022, from January to December, the VAT collection on e-services amounted to approximately billion Thai Baht.

8. Switzerland: Facing the challenge of e-commerce VAT collection through gradual legal reform[46]

a. Introduction

Twenty-five years ago, only a few people in Switzerland would have imagined that one day products from all over the world could be ordered from the comfort of one's own home.

Electronic means of payment, low freight costs and a strong Swiss franc have strengthened this development. The sales from the so-called online mail order business (or e-commerce), i.e., the ordering of goods on the Internet and subsequent physical delivery, have risen steadily and continuously in recent years and amounted to around CHF 14.4 billion in 2021 (one $US equals about one Swiss franc).

According to the Swiss Trade Association "Handelsverband.Swiss," the growth in turnover amounted to 9.9 per cent in 2021, 27.2 per cent in 2020 (mainly due to the COVID-19 pandemic) and above 8.4 per cent in 2019. Mail order companies without a registered office or a permanent establishment in Switzerland accounted for a large proportion of these sales. The Handelsverband.Swiss estimates that these sales amounted to around CHF 2.1 billion (Handelsverband. Swiss [2022]). Even though Switzerland is not an EU member state, it is relatively easy for EU companies to offer their products on the Swiss market. From a tax perspective, the remarkable level of the e-commerce figures leads to the question of whether all supplies of goods consumed in Switzerland are taxed in the same way and – if not – how a level playing field between the imported goods and the domestically supplied goods can be established. This contribution shows how the Swiss legislature has tackled the issue and illustrates the approach attempted through gradual tax law reforms.

46 Mr. Ralf Imstepf, Head of the VAT Legal Department, Swiss Federal Tax Administration (FTA).

b. Legal situation until the end of 2018: unequal treatment between imported and domestic goods

Under Article 7(1)(b) of the VAT Act, the place of taxation of goods delivered from abroad to Switzerland ("imports") was generally at the place where "the transport or dispatch of the good to the customer (…) begins." As a result, the place of taxation for such goods was usually abroad and no domestic VAT was due. According to Article 52(1)(a), the importation of goods is, however, generally subject to import VAT. Nevertheless, exempt from import VAT was – for practical reasons – the importation of goods in small quantities, of insignificant value or with a "negligible" tax amount.

The Swiss Federal Department of Finance (FDF) has defined the term "negligible tax amount" as "objects for which the tax amount per assessment does not exceed 5 francs." Thus, goods in this category are exempt from import VAT. With tax rates of 7.7 per cent (standard rate) and 2.5 per cent (reduced rate), respectively, goods with a value of CHF 65 and CHF 200, respectively, fall under the import tax exemption. The supplies of such low-value goods are called "low-value (or small) consignments" for VAT purposes (Barr et al, 2021). Other rules concerning low-value consignment did not exist until the end of 2018.

As a result, such low-value consignments were neither subject to domestic VAT nor to import VAT. The goods were, in other words, not subject to VAT in Switzerland at all (Imstepf & Eyer, 2018)[47]. This put domestic mail order companies and the domestic retail trade who mainly make domestic deliveries at a disadvantage – their goods were (and still are) subject to VAT.

c. Legal situation since 2019: mail order regulation

I. Legal framework

The simplest solution to create a level playing field would have been to abolish the CHF 5 limit for low-value consignments. However, the customs administration took the view that this abolition was neither practicable nor particularly economical in terms of collection. The legislature, therefore, chose a different path: aiming to eliminate the unequal treatment between imported and domestic goods with the so-called mail order regulation, which entered into force on 1 January 2019. The new Article 7(3)(b) of the VAT Act stipulates that, in the case of the delivery of goods from abroad, the place of supply is deemed to be in Switzerland provided that the supplier achieves a turnover of at least CHF 100,000 p. a. from low-value consignments (Barr et al, 2021). Due to the shift of the place of supply to the domestic market, the foreign – but also the domestic – mail order company (now) generates domestic turnover. It must, without the intervention of the Swiss Authorities, register with the Federal Tax Administration (FTA) as a taxable person, declare its turnover, and pay the VAT – usually every quarter. Concerning the levying of an import VAT, the introduction of the mail order regulation has not changed anything (Imstepf & Eyer, 2018,). The new rules only (but still) concern domestic VAT. Since both domestic and cross-border supplies are subject to the domestic VAT, the mail order regulation is an important piece of the puzzle for the comprehensive taxation of e-commerce.

II. Challenges in the tax collection arising from the mail order regulation

However, even under the mail order regulation, not all imports of goods into Switzerland are subject to VAT. On the one hand, it aims only at mail order companies with a minimum turnover of CHF 100,000 from low-value consignments. For practical

[47] Imstepf & Eyer, 2018

reasons, mail order companies with a lower turnover continue therefore to be excluded from tax liability – the non-taxation remains. On the other, hand, there are also purely practical difficulties. Some mail order companies often under-declare the value of their goods. Accordingly, it is difficult for the Swiss authorities to determine whether the CHF 100,000 threshold has been exceeded. By the end of 2022, only about 420 suppliers had registered under the mail order scheme. Most registered suppliers have their domicile either in Europe or in North America. Only a few companies from other regions have registered so far. Even if a foreign mail order company registers as a taxpayer, there is still a risk that it will not pay the VAT.

Switzerland currently has only a few instruments or possibilities in the area of administrative and legal assistance to take action against foreign companies that refuse to cooperate or do not fulfil their tax obligation. Nevertheless, based on a growing number of double taxation agreements (DTAs), Switzerland has the possibility of obtaining information from foreign states on companies domiciled in its jurisdiction. Article 5 of the Agreement with the European Union (EU) on Automatic Exchange of Information for tax purposes (AEOI Agreement) also allows for the exchange of information upon request. The AEOI Agreement has been in force since 2017 and applies to all EU member states. The EU and its member states already concluded the Anti-Fraud Agreement with Switzerland in 2004. Unfortunately, some EU member states have not yet ratified it. Fourteen states and the EU already provisionally apply the agreement, nevertheless. Even after the UK's withdrawal from the European Union, the rights and obligations under the Anti-Fraud Agreement continue to apply to the UK following a trade agreement between the UK and Switzerland. The Anti-Fraud Agreement provides for the possibility – in the case of criminal offences – of sending legal documents abroad, as well as the possibility of having debt collection measures carried out. Although the application of the agreement is relatively broad (since the definition of tax evasion is rather wide), lesser cases, and in particular those cases in which the company declares but does not pay the tax, are not covered.

Finally, yet importantly, the Schengen Implementation Convention of 19 June 1990 (CISA) provides for certain measures in the event of tax evasion. In contrast to the Anti-Fraud Agreement, it offers even more limited collection measures. The tax collection in this case is, for reasons of reciprocity, only possible in the case of offences pursuant to Article 14(4) of the Swiss Criminal Procedure Code. This provision states that any person who commits certain offences in tax or customs matters, and thereby procures an unlawful advantage to a particularly substantial extent or causes particularly substantial damage to the assets or other rights of the Swiss Confederation, shall be liable to a prison sentence not exceeding five years or to a monetary penalty. As a result, the collection of the VAT due by foreign companies is only possible to a very limited extent. There must be criminal relevant conduct under the CISA. In companies with domicile in non-European countries, tax collection is practically (and legally) not possible at all.

d. Possible answers to enhance tax collection from suppliers abroad

III. Path chosen: Platform taxation

As already outlined, the mail order regulation allows the FTA to tax companies (especially foreign) that import low-value consignments from abroad. The rules only apply to mail order companies that generate more than CHF 100,000 in turnover from low-value consignments; companies that generate less are not subject to VAT. In addition to this non-taxation, comprehensive taxation of all foreign mail order companies leads to the above-described tax collection difficulties. In purely practical terms, but also from a legal perspective, it is not clear how the FTA could identify and tax the countless foreign providers. To achieve a comprehensive and legally equitable taxation of all goods offered on the Swiss market (a level playing field), it seems necessary to give the digital platforms – on which the goods and services of the foreign mail order companies are offered – a role in the VAT collection. The advantages of including the platforms have been recognized by the Organization for Economic Co-operation and Development (OECD). Within the framework of the Working Party 9 (WP 9), various models of platform taxation were discussed. In this context, the WP 9 raised the question of how online platforms – through which goods are offered – could be included in tax collection.

In its 2019 report "Digital Platforms," the WP 9 outlines four possible roles that platforms could take on (OECD. 2019). First, they could serve purely as sources of information. They would be required to provide information that could be relevant for the taxation of the actual suppliers of the goods. A second role would be to make the platforms jointly and severally liable for the VAT on the goods purchased on the platform. Such a model has been introduced, for example, by the UK. Third, it would be conceivable to oblige the platforms to collect the tax without them becoming liable to pay the tax themselves. In the sense of a vicarious agent, the platforms would then take over the duty to pay the tax from the actual suppliers. Fourth, the WP 9 examines the possibility that the platforms themselves become the responsible taxpayers for all goods sold through them ("full liability regime"; OECD, 2019.). This leads to the legal fiction that in a first step the underlying company supplies its goods to the platform and this platform then – in a second step – supplies the goods to the customer. Only the "second" supply is taxable.

In its 2019 report, the OECD only comments on the supply of goods. The services sector was deliberately excluded (OECD. 2019). In April 2021, it closed this gap with the report "The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration." Since in the case of services, the actual service providers are often non-taxable, domestic private individuals (e.g., a homeowner who offers his holiday home on the platform), the OECD is more cautious in its comments on the possible roles of platforms.

On June 16, 2023, the Swiss parliament decided to introduce this last model as part of the next partial revision of the VAT Act, which will probably come into force at the beginning of 2025.

In doing so, it is following other jurisdictions, such as the EU or Australia, which already provide for platform taxation in the sense of the fourth option (full liability regime). The solution decided by the Swiss Parliament does not provide for any tax liability for platforms through which services are offered. The involvement of the digital platforms would make it possible to tax the goods of smaller companies with a turnover of less than CHF 100,000. The above-mentioned collection difficulties could be reduced because the digital platform is responsible for the taxation of the goods. Since the FTA will have to collect the VAT from only the few platforms that are more widely known, and not from the underlying supplier, the tax collection should become easier for the FTA.

IV. Other possible measures to improve tax collection from foreign suppliers.

The mail order regulation and the (possible future) inclusion of the platforms in the tax liability and the levying of VAT do not necessarily mean that foreign mail order companies or platforms will also pay the VAT due. Based on the Anti-Fraud Agreement and the CISA, the mutual assistance enforcement of the tax claim is only possible under certain conditions. However, the FTA must initiate criminal investigations beforehand. Norway, a non-EU member country has concluded a special bilateral agreement with the EU on Administrative Co-operation, combating fraud and recovery of claims in the field of VAT. This agreement provides the possibility of recovering unpaid taxes without the need for a criminal offence (Article 27 et seq.). As Switzerland is very reluctant to collect taxes from third countries, it does not seem politically feasible at present for Switzerland to adopt an approach similar to that of Norway. The alternative to improved enforcement would be a reverse charge mechanism for all goods (and services) that are imported to Switzerland. Instead of the supplier, the recipient would become liable for VAT. However, the tax collection from private, non-registered taxpayers is challenging. This is mainly because a large portion of consumers only makes a few purchases per year. Collection and control costs consequently may be higher than tax revenues. It is therefore unsurprising that the OECD does not recommend the reverse charge mechanism for business-to-consumer (B2C) supplies (OECD, 2019; OECD, 2017).

Another alternative would be a split-payment procedure. The supplier would only receive the net invoice amount without VAT and the buyer (or his bank) would pay the VAT due on the purchase directly to the FTA. Certain EU countries (Romania, Italy, and Poland) are already gathering experience in this regard. Implementation is very complex and the possibility that a domestic buyer of a good (or service) may turn to foreign banks (that are not involved in the split-payment procedure) for the payment cannot be ruled out. This would put domestic banks at a competitive disadvantage.

Against the background of these alternative forms of VAT collection and the challenges they pose, it is no surprise that the Swiss Parliament has only opted for the inclusion of digital platforms to improve tax collection. However, if platform taxation does not achieve the desired results, the Swiss Government and the Swiss Parliament will have to re-examine these alternatives.

e. Conclusion

Swiss policy regarding the taxation of e-commerce is characterized by an evolutionary approach. Particular attention is paid to the experiences with legal instruments from other states. The introduction of mail order regulation is now to be followed by platform taxation in a second step. It remains to be seen whether the goal of equal taxation of all goods (and services) – and thus the creation of a level playing field – will be achieved.

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9. Plurinational State of Bolivia: The experience with taxation of non-resident e-commerce service providers [48]

a. Introduction

Many countries see the need to reform their legislation to ensure that the use of e-commerce complies with the obligations in the country where goods and services are consumed. This has generated a debate on the ability to tax in offshore jurisdictions. Issues such as permanent establishment and double taxation have also raised concerns.

This contribution focuses on the current state of taxation of B2C e-commerce and provides details on the strategies and challenges surrounding the implementation of rules dedicated to its regulation in the Plurinational State of Bolivia (hereinafter Bolivia).

b. Domestic e-commerce

In Bolivia, the sale of goods and services by digital means and intermediaries conducting business in its territory through digital platforms, are subject to the payment of Value Added Tax (VAT), Transaction Tax (IT) and Tax on Business Profits (IUE). These taxes are applicable to e-commerce and all other transactions. Since the regulatory framework for taxing online and traditional activities apply interchangeably, there has been no readjustment of existing regulations, but rather efforts have been made to improve existing control mechanisms.

B2B e-commerce is usually less problematic by virtue of its nature. Indeed, B2B transactions take place between legal entities that keep accounts, carry out their activities under regulated conditions, and report their operations by digital means. As for B2C e-commerce, the main problem that arises is the penalty for not issuing an invoice, which can result in the closure of the establishment. But this measure is not applicable in operations carried out digitally. This problem also occurs in C2C e-commerce, because in most cases the sale of goods or services are informally made, i.e., on the street or from a private home, or digitally through social-media platforms such as Facebook, Marketplace, and others in which the holder of the Google or Facebook account cannot be easily identified. In some cases, the operations occur using different platforms simultaneously. In this regard, the National Tax Service (SIN) has implemented a series of measures, including revising billing systems, incorporating activities in the taxpayer register and implementing electronic invoicing. The measures have contributed to increased compliance with obligations and ensured the oversight of taxpayers in national territory (Box 7.)

[48] Ms. Rocío Linares, Vice-Ministry of Tax Policy under the Ministry of Economy and Public Finance of Bolivia.

Box 7

Regulatory and Normative Developments in Electronic Invoicing and Digital Services

Board Regulatory Resolution RND 10-0044-13 (December 20, 2013) established guidelines for electronic commerce transactions. For sales conducted without intermediaries, sellers are required to provide buyers with an invoice issued through Computerized or Electronic Billing at the time of delivery of the good. In cases involving intermediaries, billing must be performed by third parties using the Computerized or Electronic Invoicing modality, with the invoice also to be delivered at the time of delivery.

Board Normative Resolution No. 102100000020 (November 4, 2021) expanded the National Taxpayers Register to include several new economic activities. These additions encompass:

- Intermediation services for the sale of goods and services via digital channels.
- Provision of digital content through download or streaming.
- Platforms and services for online education.
- Cloud technology services.
- Online advertising management.
- Digital services related to online betting and gambling.

Board Regulatory Resolution (RND) 10210000011 mandates the adoption of an electronic invoicing system starting December 2021.

Supreme Decree No. 4541 (July 14, 2021) granted invoices issued digitally the same validity as those issued in physical form.

Other types of activities that are difficult to regulate include services offered through international digital platforms, such as those providing accommodation and travel services (for example Airbnb, Booking.com, and others), and transportation services (UBER, INDRIVER). Unique in these cases, the person offering the service and the consumer are natural persons, both located in the national territory. Although the digital platform may be in a third country, the transaction itself does not qualify as a cross-border operation. This has significant implications from an e-commerce and taxation perspective.

c. Goods-related cross-border B2C e-commerce

Regarding the electronic commerce of goods from abroad – acquired through an international platform such as Amazon, eBay, AliExpress, among others – although Bolivia does not have special regulations pertaining to such transactions, the transaction is subject to the payment of import taxes at the time of entry of the goods into the country. In these cases, there are two types of imports for operations without physical presence: 1) urgent shipments via courier express service and 2) postal parcels and urgent shipments, which are detailed in Box 8.

Box 8
Customs regulations for non-habitual importers (not in person)

Urgent Shipments via Express Service (Courier):

- **Scope:** Shipments where the value of the goods (FOB value) does not exceed US$1,000, with a total gross weight not exceeding 40 kg, and up to an annual cumulative value of US$4,000 (from January to December of the same year).
- **Exempt from Taxes:** None

Postal Parcels and Urgent Shipments:

- **Scope:** Shipments through the Bolivian Post Office (ECOBOL) when the value of the goods (FOB value) is greater than US$100, with a total gross weight not exceeding 40 kg, a value of goods not exceeding US$1,000, and up to an annual accumulated value of US$4,000 (from January to December of the same year).
- **Exempt from Taxes:** None

Online Purchases (Postal Shipments and/or EMS Express Shipments) by Commercial Companies:

- **Scope:** All packages and postal parcels sent by commercial companies, regardless of their value and weight, are subject to customs taxes.
- **Exempt from Taxes:** Packages and postal parcels not sent by commercial companies will be free of customs duties if they meet the following conditions:
  - **Value:** Does not exceed US$100
  - **Weight:** Does not exceed 2 kg for postal packages and 20 kg for urgent shipments (EMS)
  - **Dimensions:** Does not exceed 1.50 meters in any dimension or 3 meters in contour for postal packages.
  - **Special Case:** Pharmaceutical products and/or medicines, imported under express medical prescription for personal use, are exempt if the quantity does not exceed three units (boxes or bottles).

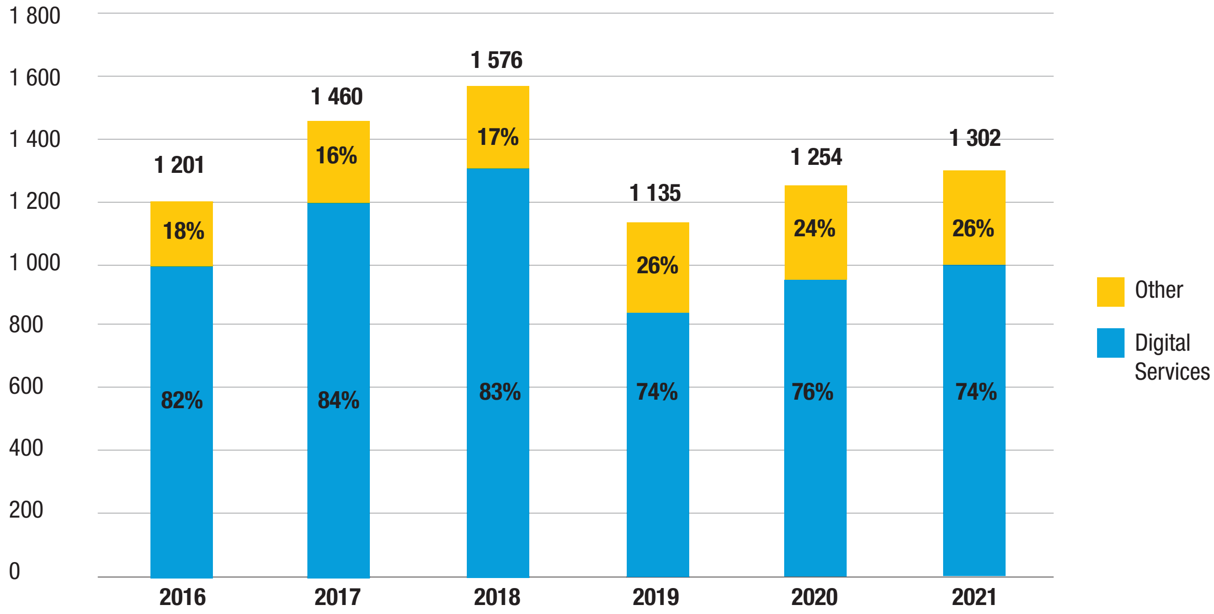
d. Services-related cross-border B2C e-commerce

According to projections from the Bolivian Financial System Authority (ASFI), for the period from 2016 to 2021, the purchase of digital services such as Netflix, Google and YouTube, among others, increased by 56 per cent, representing an average annual growth of 9 per cent.

Of the total digital transactions carried out in 2016, Bs 213,000,000/US$ 30,758,052 (18 per cent) correspond to sales for "digital services;" for 2021 it is estimated that this amount rose to Bs 332,000,000 /US$ 47,942,128 (26 per cent) as shown in Figure 5. Despite the fact that cross-border digital services account for a significant share of transactions, they do not currently report the payment of taxes in Bolivia for their activities, due to the nature of their operations.

Figure 6

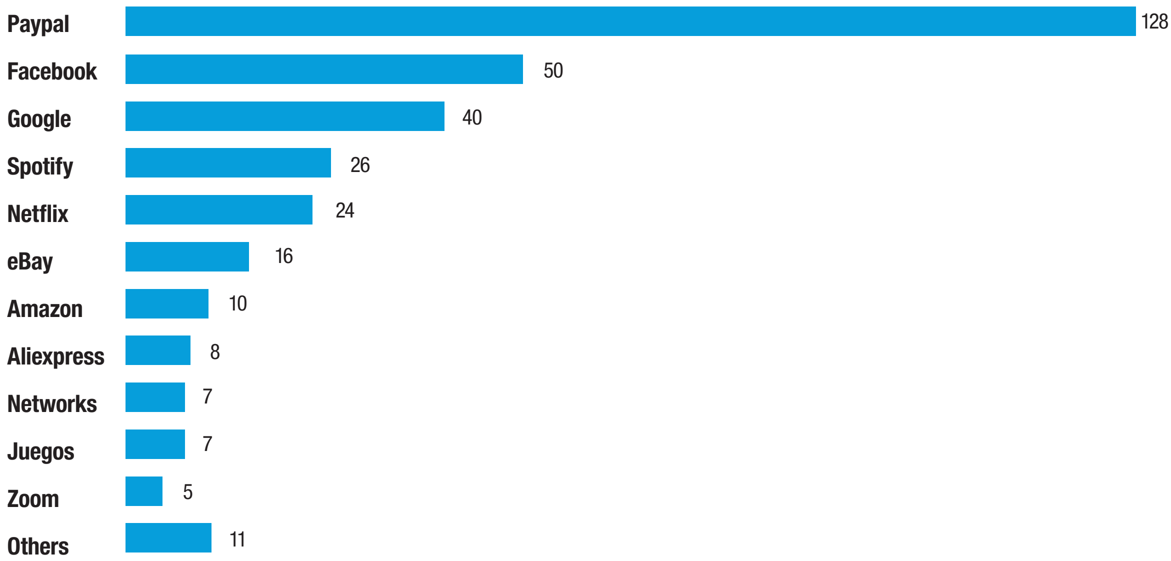
Composition of transactions by type of activity 2016 – 2021(P)
(Expressed in percentages and millions of Bolivians)



Source: ASFI, Elaboration: Vice-Ministry of Tax Policy; (P) these are projected values.

Figure 6 shows the value of the operations that were carried out using debit and credit cards originating in a bank account from a national financial institution. It should be noted that Bs. 128,000,000/ US$ 18,483,712 corresponds to transfers to the PayPal payment platform. The remaining value corresponds to payments for advertising services (Facebook, PayPal,), streaming services (Spotify, Netflix) and other platforms that serve as intermediaries for the purchase of goods or services (Amazon, AliExpress, eBay,). PayPal represents 38 per cent of the total transactions, Facebook 15 per cent, Google 12 per cent, and the remaining 35 per cent corresponds to transfers for smaller values to companies such as AliExpress, Amazon, eBay, Netflix, Spotify, among others.

Figure 7
Operations carried out by digital services 2021 (In millions of Bolivians)



Source: Financial System Authority, Elaboration: Vice-Ministry of Tax Policy. Estimated data as of December 2021.

e. Challenges of taxing cross-border e-commerce

Based on the above, the main shortcoming identified is the absence of regulations that allow the payment of taxes for services that are provided from abroad through online digital applications. Attempts have been made twice to manage the passage of new tax rules: first, using an approach that sought to tax income (Alternative 1) and second, using an approach that taxed consumption (Alternative 2), as described below.

Alternative 1: Tax Digital Services with the Tax on the Profits of Beneficiary Companies Resident Abroad (IUE-BE).

It was a regulation raised by the Executive Branch of the Government, in 2017. It consisted of a Supreme Decree that extended the scope to natural persons as withholding agents. The tax on the profits of companies (IUE) is governed by the principle of source or territoriality, but it also extends to the income obtained by beneficiaries abroad "extended source," for the provision of services made from abroad. This tax is not subject to the definition of the permanent establishment. As such, income from fees, remuneration or remuneration of service of any nature from abroad of both natural and legal persons are also covered by this tax. It is presumed that the profit of the beneficiary from abroad is 50 per cent of the total amount paid or remitted, on which the rate of 25 per cent is applied and its payment mechanism is through withholding by the person who pays for the service in national territory.

Through this mechanism, legal persons contracting services provided from abroad withhold the effective tax rate of 12.5 per cent. This treatment allows them to deduct this expense from the IUE, a mechanism that has also been working for digital services. However, there is no similar scheme when the person receiving the service in national territory is a natural person.

Among the main features of this alternative were the following:

1. The rate paid is 25 per cent of 50 per cent of the total amount paid or remitted (effective rate of 12.5 per cent).
2. The payment mechanism is through retention by whoever pays or remits the beneficiary from abroad.
3. Financial Institutions established in the national territory will withhold the tax on behalf of natural persons who contract services from abroad at the time they make the payment with their credit or debit card.

The main problems with its implementation were:

4. Financial institutions experienced operational problems in carrying out the withholding tax because, at the time of payment, the recipient and the reason for the payment were unknown.
5. Financial institutions could not be held responsible for tax withholdings when taxpayers do not have sufficient balance in bank accounts.
6. The bank did not have the mechanisms to incorporate the amount corresponding to the tax into the price.
7. Being a business tax whereby the burden would have been the consumer.
8. In case of making the retention by the activity code used by international debit and credit card operators (VISA and MasterCard), the bank would have made the retention at the time of knowing the reason for the payment, that is, after payment.

<u>Alternative 2: Taxing Digital Services with Value Added Tax (VAT)</u>

This alternative consisted of a Bill that allowed the application of the consumption tax (Value Added Tax – VAT) to digital services provided from abroad and consumed in Bolivia, similar to a tax on the import of services that was proposed in the 2021 by the Government. In Bolivia, VAT has a rate of 13 per cent; however, unlike other countries, this tax is included in the sale price, which means it is not set out separately on the invoice.

Among the main features of the proposal were the following:

9. It was intended to tax the following services:
    a. Intermediation between third parties in purchases of goods or services of any nature, made in the national territory or abroad.
    b. Supply of videos, music, games, texts, magazines, books, and other analogues.
    c. Transfer, installation or provision of software, storage, platforms, or any other IT infrastructure.
    d. Advertising disseminated by any medium or digital medium.
    e. Any other digital service.
10. Companies that provide digital services from abroad had to register with the National Tax Service (SIN) to settle and pay the tax bimonthly.
11. In cases of non-registration, financial institutions had to withhold the tax from users at the time of payment through electronic payment instruments.
12. It was presumed that the digital service was consumed, used or exploited in Bolivia when the transfer, download, retransmission through the Internet or other technology had been made from a device whose IP, SIM card or other geolocation mechanism located in Bolivian territory or when the electronic payment instrument used for payment was provided by an entity regulated by the Financial System Supervisory Authority (ASFI).

Obstacles to implementation include:

13. The media disinformation originating from political parties opposed to the current government generated the rejection of the measure by the public. This was because they thought that

access to educational platforms would become more expensive or that they would pay more for free platforms such as WhatsApp and Facebook.

14. Foreign companies that had registered in Bolivia would have had to include VAT in their price, so there was a possibility that they would raise their prices.

15. The tax burden fell directly on the consumer in the national territory, increasing the cost of these services in Bolivia.

16. The effectiveness of tax collection depended on the information on the recipient and reason for payment abroad that Financial Institutions, Card Administrators (ATM) and international payment operators such as VISA and MasterCard had.

17. The presumptions foreseen to identify those digital services that are consumed in national territory could have caused some of these services to not actually being consumed in Bolivia.

18. The Bolivian market is very small in terms of the number of users of digital services and can be unattractive for companies to register in the SIN, with few mechanisms for coercive collection and/or control of these providers.

f. Conclusions

Electronic commerce, through its different modalities, has expanded and accelerated since the COVID-19 pandemic, resulting in different countries adapting their legislation to collect taxes for the provision of services from abroad. Bolivia recognizes the need to propose regulatory adjustments trying to collect taxes for the provision of services from abroad and granting equal conditions to local companies that provide similar services. However, no local companies have made any such proposal and currently only the IUE-BE is charged in B2B services.

Although initial attempts to tax digital services provided from abroad were unsuccessful, Bolivia cannot renounce the right to tax income generated in its national territory. Therefore, the alternatives proposed should not be rejected outright, as well as those proposed by international organizations such as the OECD and the G-20. Within the framework of the multilateral agreements as part of the inclusive framework on BEPS, the author proposes the application of a global minimum tax of 15 per cent, based on sales volumes and others, or the alternative proposed by the United Nations consisting of negotiating the inclusion of Article 12b in a Model Tax Treaty for the taxation of automated digital services.


REGULATION

B. Private Sector Perspectives

1. Vertex: The importance of technological solutions[49]

a. Introduction to the e-commerce digital divide

In today's global digital economy, technology equivalence, or at minimum, the approximate parity between developed and developing economies, remains a central challenge for the economic transformation of developing countries. This imbalance has become a more critical and pressing reality post pandemic. E-commerce, and its impact on tax revenue, offers unique opportunities for developing countries to modernize their digital economy and advance sustainable development. However, challenges pertaining to the digital divide are the result of a multitude of diverse factors that encompass scarce resources and low levels of digital maturity in governance, public finance systems and tax administrations. This contribution enumerates and proposes essential recommendations for policymakers and other public and private business leaders keen on building and expanding a solid and secured e-commerce foundation for generating national revenue through taxation of remote sale transactions between B2B and B2C over digital computer networks.

b. The private sector perspective on enabling reciprocal e-commerce G2B revenue arrangements

Many developing countries have difficulty taxing e-commerce due to deficiencies in effective tax technologies that can sustain and support digital channels and continual data flows for efficient tax compliance processing and revenue collection.

This can be achieved by modelling successful strategies and methods from operational digital tax structures and procedures already applied in other countries and jurisdictions. By adopting best practices standards, the technology "gaps" can be recognized within administrative tax systems, which can render more efficient tax assessments and revenue collection cycles. The commercial drivers and economic shifts are recurrent in the present global digital economy as the landscape evolves. In addition to balancing global e-commerce data flows into their jurisdiction, tax authorities must also look at the transactional exchange involving e-invoicing, payment systems, and reporting, and even anticipate the potential elastic expansion to and from global e-markets. The need to adopt and align effective regional rules and regulations, including the economic nexus thresholds and digital PE that comprise business activity rules and economic (permanent) establishment components, can create additional value for the jurisdictions.

From the tax technology standpoint, the main elements that need to be considered include: (1) the upgrading and augmentation of a country's digital infrastructure, if not already in place, (2) an internal tax administration's tax technology modernization to process transactions originating from different points of sale and their many inputs and outputs that can be taxable, such as digital purchases of goods and services, financial transactions, and other educational and global media and entertainment streams, as well as cloud-related transactions (3) effective digital and e-payment systems, comprising verifiable purchase check-out programming that contain tax withholding or charging inclusions, whether VAT, GST or U.S. style- state sales taxes, or others.

49 Dr. George Salis, Principal Economist & Tax Policy Advisor, Vertex.

c. Minding the deficiency gaps and optimizing e-commerce tax compliance

- Technology vs. fiscal governance efficiency "gap" analysis

Although there has been no single dominant or uniform model for constructing an adequate infrastructure and technology gap assessment since the 1990s, several models have been proposed. Recent research denotes that related e-commerce enabling trepidations and challenges that are separately recognized by the various stakeholders concern "both technical and knowledge-based sides of the digital divide." This high-level evaluation must further include the ICT infrastructure and services, trade logistics, legal and regulatory frameworks, [country-specific] corporate rules and regulations; payment solutions, consumer and business trust norms, competition/access to platforms' finance, capacity-building in e-commerce skills and technical assistance, as well as understanding the moratorium on customs duties on electronic transmissions.

Prior to engaging in infrastructure and capacity-building, an interdisciplinary gap assessment is advisable for policymakers. The assessment should comprise: (1) technology, (2) technical capacity (knowledge, skills and abilities), and (3) the non-technical substantive areas described above, such as national and international legal and regulatory frameworks, trade logistics and regulations, all which will impact e-commerce structural efficiency and tax compliance.

As a matter of diligence, the primary technical and operational risk factors created by cross-border e-commerce compliance generally confronting developing countries are related to the following areas:

➤ Multi-jurisdictional Regulatory Complexity – This deficiency is found at both the jurisdictional and intergovernmental policy levels. Regulatory complexity arises when rules and regulations become challenging to read, understand, and interpret and when these conflict with other policies or regulations, both domestically and internationally. Vague statutes or ambiguous regulations can create misunderstandings in legal standards, especially when the legislative intent is unclear. In our case, this commonly results in tax compliance uncertainty. Further, contradictory provisions, such as treating similar tax events in commercial settings and situations, such as the tax treatment of goods and services in between jurisdictions, can confuse buyers and sellers, other taxpayers, and tax administrations. The inconsistent application of intergovernmental policies related to trade and tax regulations in certain countries, tax regimes, or trade and customs rules can create incompatible standards that can be difficult to follow and result in disputes between national tax administrations and their counterparts in other countries. Since regulatory complexity can generate audit-related tax challenges and other costly assessments, this intricacy can also become an economic encumbrance for governments, as it will undoubtedly increase the tax burden (cost of compliance) for taxpayers while raising budgetary expenses for revenue collection administrators. Regulatory complexity can also create tax differentials, rate and factor gaps, and other economic and competitive distortions, as well as triggering tax avoidance and non-compliance.[50]

➤ Detailed E-commerce Tax Compliance and Reporting Framework – A lack of country-by-country e-commerce tax rules and the ability and capacity to maintain dedicated digital tax

[50] Ulph, 2014, Measuring Tax Complexity, Chapter 4, Tax System Complexity Symposium, Prato, Italy, and Office of Tax Simplification (OTS), HM Treasury, UK., also see: Saad, 2014, Tax Knowledge, Tax Complexity and Tax Compliance: Taxpayers' View, 2nd World Conference On Business, Economics And Management-WCBEM 2013.

technology for expansive data storage and systems for transmitting digital inter-jurisdiction information and data exchange for eventual e-invoicing, including real-time reporting, or near-time reporting, and payments data and information on remote sellers, marketplace provider or facilitators, and buyers, comparable in model to the original European Peppol BIS Billing[51] system, or model, currently also adopted and adapted in several countries in Asia, Latin America, and elsewhere.

- Reliable and Functioning Revenue Management Controls – Effectively ensures that the rules and the tax revenue collection are correct, fair, and equitable, rendering economic and social benefits and incentives to all stakeholders. Fair and equitable taxation standards fall on both governments and taxpayers alike, creating an economic incentive conducive to stewardship on behalf of businesses.
- Efficient Legal and Tax Accounting Capacity and E-Commerce Administrative Procedures – Can facilitate accurate processing of tax collection and payments at various transactional levels, including the ability to process and compute transactional data, such as orders (purchase) and (jurisdictional) tax due, whether it is VAT, GST, or a Sales Tax.
- Modernization of Public Finance Systems – Governments must adapt and revamp their public finance methods to reflect modern digital and automated commercial and business taxation processes. By upgrading their internal platforms and reporting structures, tax administrations can avoid generating gaps and obstructions to indirect tax compliance and reporting.
- More Effective Revenue Flows and Cycles Management – These should include taxpayer credits and refunds to be rendered on over-charges and payments.
- Risk Controls and Management – Effective data risk management and controls should be instituted as a matter of tax administration procedure and policy, as the volatility in cybersecurity standards and taxpayer information confidentiality that apply to e-commerce and data protection are essential secured-technology features that can have an enormous positive or negative impact that can further dis-incentive tax compliance in e-commerce.

Aside from the critical tax technology foundation, countries need to offer a secure cyber environment. As indicated above, a secure commercial data and payment environment strongly incentivizes and encourages e-commerce flows in a protected and reliable system. It forms the basis of a reinforced regional digital ecosystem. Therefore, a country's defences against cybercriminals seeking to commit fraud, steal vital data from individual taxpayers, companies, financial institutions, or a government's digital infrastructure, or disable their cyber-capacities, is paramount for all stakeholders.[52] Subsequently, with the aid of other developing countries

[51] The Peppol BIS system for e-invoicing provides a set of specifications for implementing a Peppol business process. It is a Core Invoice Usage Specification (CIUS), following the guidance given in chapter 7 of the EU-EN 16931. It is compliant with the European Standard (EN 16931). Understanding the Peppol specifications can be instructive for countries' development of e-invoicing and digital reporting requirements and standards. https://docs.peppol.eu/poacc/billing/3.0/bis/#_link_to_main_site_of_ documentation

[52] Building a Resilient World: The ISAGCA Blog - This blog covers topics on automation cybersecurity such as risk assessment, compliance, educational resources, and how to leverage the ISA/IEC 62443 series of standards. ISA Global Cybersecurity Alliance (ISAGCA), is a non-profit organizations like the International Society of Automation and BuildingCyberSecurity.org, have partnered with the world's leading risk managers and insurers to implement a framework of controls, best practices, and certifications. https://gca.isa.org/blog? https://gca.isa.org/blog?hstc=16245038.96e173468d2f4eae516681f3fbea6f06.16246289741581624628974158.1627591804450.2&hssc=16245038.2.1627591804450&hsfp=1492382067&_ga=2.165410876.2075042537.1627591803-1065489531.1624628974

or mature economies[53] that are already highly successful and known to be highly proficient in providing such sturdy defensive networks (i.e., Lithuania, Estonia, and Malaysia), developing countries can model and enable effective initiatives that can accelerate a safe and resilient digital infrastructure that can support a successful e-commerce program. Depending on a developing country's existing degree of digital infrastructure safeguards, a failure to achieve a higher level of national cybersecurity will render e-commerce tax compliance design ineffective and, thus, financially unreliable for e-trade, commercial data flows and information exchange, and tax collection. For example, the Global Cybersecurity Index (GCI), emphasizes "five pillars" to indicate the building blocks of a nation's cybersecurity culture: legal, technical, organizational, capacity-building, and Co-operation.[54] When applied not just merely as a broad gauge but, more importantly, as a metric and a tool, each of these pillars becomes a specific indicator to determine how countries can measure their cybersecurity position and improve, enhance and bolster their cybersecurity programs.

The GCI and other surveys like it can serve the developing nation's e-commerce digital infrastructure defensive wall. As a result, the country can incentivize a reliable and secure cyber-environment supporting e-trade and commerce, and accordingly, reinforce tax compliance and much-needed revenue collection for developing countries in the post-Covid global economy. If not, they risk staying economically deficient and behind for some time as the rest of the world enters recovery and growth.

d. Conclusions

Building a modern technological infrastructure at any level is a difficult and expensive challenge for any country. It affects developing countries even more, which can be frustrated by the post-Covid economic decline, and the uncertainty that is sure to follow. However, recognizing a country's technology deficiency and its gaps is central and critical in assessing its technology infrastructure and any weakness within. Accordingly, policymakers are invited to undertake a series of technical and substantive gap analyses to determine a country's disposition to maintain digital readiness.

Each developing country will certainly have its own unique economic and technology infrastructure demands. As such, each country should develop its own distinctive gap assessment design, to determine its technical and substantive requirements, and its subsequent path to e-commerce and eTrade system implementation. As indicated herein, a country's gap analysis comprises much more than a mere appraisal of its technical or technology factor-deficiency. It should consist of a multi-layered and interdisciplinary evaluation of the essential technical factors and regulatory elements that are necessary to establish and engage globally in a secured and trustworthy way. Efforts should then be made to develop sustainable e-commerce trading systems that can rapidly generate much needed tax revenue, as well as support national and regional economic expansion.

Much like governments, the private sector is validly concerned with technology and substantive issues related to the implementation of e-commerce and market access consistency in developing countries and their commitment affecting cross-border data-flow security and the jurisdictional regulatory complexity governing e-commerce locally, as well as the digitalization of commercial infrastructure accessibility.

[53] SecuredWorld, 2022, "Ranking the 10 most powerful cyber nations in the world," The Belfer Center for Science and International Affairs, Harvard's Kennedy School, Harvard University, https://www. secureworld.io/industry-news/top-10-most-powerful-countries-in-cyberspace

[54] SecuredWorld, 2019The List: Best and Worst Countries for Cybersecurity, Global Cybersecurity Index (GCI), What's the GCI and what does it measure? https://www.secureworld.io/industry-news/ countries-dedicated-to-cybersecurity

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2. Kapruka: Tax challenges for enabling cross-border e-commerce in Asia from the private sector perspective[55]

Sri Lanka's e-commerce landscape is still in the early stages, with e-commerce penetration less than 2 per cent of retail sales. Existing and new domestic players are seeking out new opportunities to tap into the growing e-commerce market. Founded in 2005, Kapruka, a local e-commerce company based in Colombo, saw potential in expatriate non-resident Sri Lankans to order goods for their friends and family in Sri Lanka. As e-commerce emerged around 2012, Kapruka focused more on developing the domestic e-commerce market. It was a unique business model that carried its own inventory, a marketplace and cross-border e-commerce all at the same time. Kapruka's business model consists of multiple e-commerce verticals, which in turn presents unique tax challenges and opportunities.

a. Taxation challenges and opportunities

Sri Lanka relies heavily on indirect taxes, which is VAT applied at the final transaction. There are also no special tax treatments for e-commerce. A particular challenge for domestic businesses is that the VAT and other taxes apply to the total transaction value. Since the product is purchased, stored and sold by Kapruka, this falls directly into the category of a retail business where all taxes are applied at the top line. Kapruka gives a higher preference to suppliers who offer VAT invoices, so the input VAT will help the company price the product at a lower amount to the consumer. The VAT

[55] Mr. Dulith Herath, Chairman, Kapruka.

threshold has been reduced multiple times in the last two years in Sri Lanka, qualifying smaller suppliers to offer VAT invoices. At the same time, certain wholesale suppliers to Kapruka will produce a VAT invoice that could be generated from the total VAT owed. Only high-revenue-earning suppliers are required to provide VAT invoices, however. Therefore, when larger domestic businesses purchase from small suppliers, they will bear the total VAT cost. As a general practice in e-commerce in the region, Kapruka does not show the VAT or other taxes as a separate line item during the transaction. It is included in the total product price.

b. Private marketplace

Kapruka has launched a private marketplace named "Kapruka Partner Central." In this model, the taxes are applied to the service fees that Kapruka charges. The goods payment is directly paid after the transaction to the supplier, and they are responsible for paying the necessary taxes.

c. Cross-border e-imports and exports

Kapruka offers a service for Sri Lankans to order goods from global platforms in Sri Lanka. In this model, Kapruka acts as a direct importer of the goods. The customer pays Kapruka in local currency and Kapruka imports from the global platform using its own dollars. All taxes paid in this model are similar to any other direct goods-importing retailer in the country.

Kapruka also offers local brands to list their products on global platforms. In this model, there are tax concessions offered in Sri Lanka, as it is an export e-commerce model where foreign currency is bought into the country. It is essentially a zero-tax rate qualifying business since the revenue is made in foreign currency and the product is shipped out of the country. A zero-tax rate is offered in Sri Lanka if the exported product or services consumption is in another country and if the transaction was done in a foreign currency.

d. A call for a central tax collecting platform

To develop an equal playing field between domestic and international platforms, Kapruka would welcome a central tax collecting platform for cross-border e-commerce tax collections. Sellers could register on one side, and tax collectors could register on the other side. Benefits would include that the international seller would clearly list the destination country duties upfront to the customer before the product is purchased. The collected duty would be paid directly to the relevant countries' tax collecting agencies before products are shipped. The shipping label would carry a tax-paid reference number to allow for spot checks at customs. This solution could resolve the major disconnect between the tax agencies and global e-commerce platforms. A flat tax could also be suggested due to the complexity of enforcing commodity-based taxes. This way sellers would not need to worry about product category mismatches when goods arrive in the country.


MARKET
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C. Academia & Research Institutions

1. National Major University of San Marcos and the University of Lima:

Challenges of Tax Management of Low Real Value Transactions Made through E-Commerce Platforms[56]

a. Introduction

Recent years have seen an explosive increase in cross-border trade in goods and services driven by developments in information technology. Many countries have reacted by introducing amendments in the domestic legal and operational frameworks to deal with the increased volume of transactions. However, only few have understood that it was necessary to assess the impacts on their economy, on revenue collection and on their processes of control and repression of evasion and avoidance practices.

International experience shows that countries should be concerned about the loss of revenue generated by the shifting of operations abroad; possible business reorganizations carried out to evade or avoid taxes; and the proliferation of evasion mechanisms facilitated by simplified regimes that are subject to abuse by taxpayers, among others.

The above account is a partial identification of the different risks that must be studied and managed not only with the deployment of control activities by the Tax and Customs Administration, but also with the improvement of the legal framework.

It should be noted that many countries in the world, including Peru, grant a "*de minimis exemption*" to imports of "low-value goods." As a result, imports of products not exceeding a certain value are not subject to VAT and in some cases not subject to customs duties.

The minimis treatment was introduced in many jurisdictions decades ago, at a time when e-commerce did not exist. This tax policy decision was then justified by the need to simplify the administration of VAT on imports and by the reduction of collection costs. The amounts involved at that time were not significant and giving the general treatment to these transactions implied an effort whose costs exceeded the potential collection.

While this was initially true, the situation has changed. Coelho et al (2022) shows that the amounts of cross-border e-commerce have grown substantially in recent years. Consequently, it can be derived that unenforced collection is already substantial. There is consensus that the growth of e-commerce – facilitated by the reduction of logistics costs and electronic payment facilities – will continue to show significant growth for the coming years.

This situation makes it advisable to re-evaluate the initial fiscal policy, since it not only contributes to a significant loss of revenue, but also raises questions about VAT neutrality, since foreign traders obtain an undesired competitive advantage over local traders by not having to charge VAT on products sold from abroad.

This contribution will review the current legal framework in Peru on imports of low-value goods and will also identify the emerging risks that have been detected inside and outside of Peru. As appropriate, it recommends addressing this issue through the adoption of a series of tax administration measures and changes in the legal framework, according to international experience.

[56] Ms. Nancy Aguirre Arredondo, The National University of San Marcos and Mr. Fredy Richard Llaque Sánchez, Universidad de Lima.

b. Treatment of small purchases in Peru

Peru has well-developed regulation regarding purchases under US$ 2,000. Thus, there exists a series of secondary rules, among which the following should be highlighted (see Box 9).

Box 9
Treatment of small purchases in Peru

- General Procedure for Express Delivery Shipments - DESPA-PG.28. Through this procedure, it is allowed to import or receive purchases or gifts from abroad through postal services and Express Delivery Service Companies (ESER), up to an FOB value of US$ 2,000 per shipment (if greater than this amount, the import procedure for consumption must be carried out). The ESER are companies that provide a service of collection, transportation, storage and delivery of fast delivery shipments to the consignee. These companies receive goods from e-commerce platforms, provided that the FOB value of the postal shipments does not exceed US$ 200 per shipment. ESERs are allowed, by exception, to keep goods with a customs value of up to US$ 3,000 under this procedure. Goods entered under this procedure whose FOB value does not exceed US$ 200 do not pay customs duties or VAT; if they exceed this threshold up to the maximum amount allowed, they would pay 4 per cent customs duties and 18 per cent VAT.

- General Procedure for Postal Items Transported by the Postal Service - DESPA-PG.13. This procedure is derived from Supreme Decree No. 244-2013-EF, Regulation of the Special Customs Regime for Postal Shipments or Parcels Transported by the Postal Service, provided by postal concessionaires. Under this procedure the company, in the presence of the customs officer, performs the opening of the postal cargo and separates the direct distribution shipments. The Easy Import ("Importa Facil") mechanism may be used in this procedure. If the value of the goods is US$ 200, people will not have to pay taxes or carry out any formalities; they will be able to dispose of their goods in the postal service. If this amount is exceeded, the imports could be subject to taxes.

- Procedure for Simplified Import Clearance - DESPA-PE.01.01. This procedure allows importing or receiving shipments from abroad through air, sea or land cargo companies, up to a maximum FOB value of US$ 2,000 per shipment. It also applies to goods considered as baggage and household goods. Under this regime the goods that may enter are, among others: Samples with no commercial value, gifts whose FOB value does not exceed about US$1,000, goods whose FOB value does not exceed US$2,000, including released imports and postal shipments and express delivery shipments, up to an FOB value of US$1,000, destined by the same importer.

c. Emerging risks in the taxation of low-value imported goods, the "de minimis rule" and ways to manage risks

Maintaining the *de minimis* rule with relatively high thresholds, as is the case in Peru, is not a valid option. If it is maintained for any longer, it will increasingly affect the proper functioning of VAT based on the principle of the country of destination and will also affect the neutrality of this tax, due to the increasing amount of low-value imported goods being traded. But the impact is not only at the VAT level, it also affects taxes such as custom duties, Selective Consumption Taxes, Corporate Income Tax, among others. This is as a direct consequence of the displacement of transactions abroad.

The risks of maintaining this situation are observed in the 3 groups involved: 1) final consumers; (2) traders who purchase goods for resale; and 3) e-commerce platforms.

For the first group, maintaining the current situation benefits them because they can acquire a greater variety of goods from abroad at a lower cost. While considering that this situation generates a higher level of satisfaction, it should not be ignored that the group exhibits contributory capacity that can be taxed. Failure to do so not only generates a loss of revenue, but also affects VAT neutrality, generating unfair competition to local business, who lose their customers as a result of a fiscal policy decision, which makes products purchased directly from abroad cheaper without any valid policy reason.

In the second group, in theory the initially lost revenue should be recovered when the trader selling a good charges VAT on the imported products and with the highest income tax payments. However, this is often not the case because many countries have simplified regimes for small traders that operate with low effective tax rates so that the initially uncollected revenue is never recovered.

In this group there is a risk that taxpayers do not register with the administration and evade compliance with their formal and substantial obligations, as well as tax control. This occurs as long as the "importer" carries out operations below the minimums established by the legislation. In this scenario, there is no obligation to register as long as it is presumed that there is no business activity. This creates an opportunity for abuse, since merchants, via the atomization of purchases, and in more aggressive cases, via the creation of networks of related importers (family or friends) can carry out a large number of imports within the thresholds and exempt themselves from their obligations of registration and tax payment.

Business restructurings or changes in the fiscal residence of companies may also be considered with the sole purpose of evading tax payment. Some companies seek to break their link with the country of residence or prevent reaching the *de minimis* threshold, thereby freeing themselves from custom duties without losing their market and their income.

Among others, the above practices not only generate tax evasion, but also put businesses who use these practices at a competitive advantage over businesses who operate correctly. This also affects, as evidenced, tax morale.

Finally, the last group, made up of the platforms that facilitate these transactions, presents risks depending on their residence status. In the case of non-residents, the situation varies depending on whether or not they constitute a permanent establishment (PE) in the country. In many Latin American and Caribbean countries, PEs are considered to be full taxpayers of VAT. However, if the platform does not have a PE, it is not subject to this obligation, nor is it required to collaborate with the management of taxes and the profits that could be generated from local sources and are not affected by income tax.

The lack of PE also generates an asymmetry with local platforms, with undesirable effects. For instance, the change of tax residence outside the country to gain comparative advantages vis-a-vis local platforms.

The challenges discussed above are often exacerbated when control of these operations is divided into several agencies. In this case, their objectives rarely converge in the prioritization of these transactions as a risk of tax revenue losses for the public administration. Furthermore, the agencies do not exchange information, nor coordinate their activities. The lack of coherence results in confusing and contradictory actions, due to the uncertainty about which agency is responsible for which tasks, or false assumptions that the management of specific actions belongs to the other agency. As a result, the levels of control are minimal and the management is carried out on a case-by-case basis, and not in a comprehensive and systemic manner.

In our opinion, it is not acceptable to assume these risks, and it is therefore necessary to explore management alternatives in order to adopt or develop measures to manage the problems that may arise in each country.[57]

Some countries have taken, inter alia, the following measures: 1) the reduction of the *de minimis* threshold for both customs duties and VAT purposes, or at least only for VAT; 2) improvements to the regulations of the tax register for importers whose transactions suggest a lucrative purpose and not personal consumption, thus controlling tax evasion and import automatization practices;

3) improvements to risk models in order to detect signs of tax evasion or the operation of networks of false end-consumers (these methods have been generated as a result of the collaborative work of the agencies involved); 4) rules to generate taxpayers registration obligations as taxpayers to non-resident platforms that carry out operations on a certain annual amount; 5) obligations to charge VAT on sales made by non-resident platforms and the obligation to deliver the amounts charged to the tax authority of the country of destination (supplier collection method).[58]

It should be emphasized that these measures, among others, have also been taken in consideration of simplified mechanisms of declaration, payment and alternatives to accelerate the clearance of goods at customs.

In countries where the management of internal taxes and customs duties, as is the case of Peru, is handled by a single agency, the adoption of measures of this type, without being free of complications, can be faster insofar since the existing customs payment methods can be extended to these low-value transactions, while the supplier payment method mechanisms are being implemented. Notwithstanding the foregoing, whether the tax and customs administration are integrated or not, the design of the new operation model must take into account all relevant factors, including the improvement of risk models and the reinforcement of non-intrusive controls carried out by the customs administration to prevent the entry of undervalued or misclassified goods in order to avoid new controls.

d. Conclusion and recommendations

Many countries grant a «*de minimis* exemption» to imports of «low-value goods» that exempt them from VAT and other taxes. This tax policy decision, taken several decades ago, has led to the emergence of a series of practices that violate fundamental principles of taxation and have an impact on the economy, as well as on tax collection, increasing tax evasion and avoidance schemes that also affect tax morale.

As developed in Point C, maintaining the previous situation affects three perfectly identified groups: final consumers, merchants who acquire goods for resale and e-commerce platforms. The existence of the rules of *de minimis* and simplified procedures for final consumers is liable to abuse by some taxpayers.

The trends observed in countries that have already implemented measures to mitigate risks include changes to regulations to reduce the threshold for VAT and customs duties, the obligation to charge VAT on sales made through non-resident platforms

[57] Creedy (2017): The Optimal Threshold for GST on Imported Goods by J. Creedy (Australian Economic Review, vol. 50, no. 2, June 2017, pp. 169-80). A number of additional reasons justifying the change in this fiscal policy decision are developed at length.

[58] This last measure, supplier collection method, has important advantages in that various specialists recognize in this method a cost-effective way of administering VAT on imported goods of low value.

under the supplier method model, the direct payment by the platforms of the taxes corresponding to domestic sales, and specific anti-avoidance rules to control the atomization of operations and tax avoidance.

Notwithstanding the above, changes in fiscal policy embodied in the rules should include new powers for the tax and customs administration to optimize risk models, simplify import processes, improve non-intrusive controls, and carry out control actions to prevent tax evasion and avoidance practices detected in each country.

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2. Mawazo Tax Policy Research Centre: Tax implications of the growing use of social media for e-commerce

a. Introduction

Following the COVID-19 pandemic, many digital and e-commerce businesses experienced significantly increased revenue gains. These online purchases include transactions performed through social media.

The growth in social media usage in developing countries has mirrored the growth in Internet use. In 2010, only an estimated 100 million people in Africa used the Internet, from an estimated two billion people at the time (Essoungou, 2010). In December 2021, there were an estimated 590 million Internet users in Africa.[59] Many of these Internet users are using social media. For example, there are an estimated 255 million Facebook users in Africa.[60] Widespread use of social media is important in the context of tax implications because many small and medium businesses in developing countries market and sell their products through such platforms. As such, this contribution explores tax implications of the growing use of social media for e-commerce.

b. Social media and business

Social media is a collective term for various online communication platforms dedicated to interaction, content-sharing and collaboration (Fuchs, 2017). Social media can positively influence a business'[61] revenue and sales because it enables businesses to easily communicate with customers and the public and monitor the performance of competitors' brands (Lutu, 2015). Businesses are also able to use social network monitoring tools to track postings and immediately respond to customer queries and requests. They can also carry out online polls and surveys to obtain near real-time feedback from customers and can also receive valuable product improvement ideas by tracking postings (Lutu, 2015). Finally, businesses can take advantage of contacts made via microblogging services to further their branding efforts by responding to comments made about the company brand (Lutu, 2015). As such, social media platforms are more relevant in B2C than in B2B e-commerce.

Social media companies have realized their growing role and adapted accordingly. The social media company Meta has established WhatsApp Business, which is a communication channel where businesses can connect with their customers. This app is exclusively made for small businesses since larger ones are encouraged to use another feature, called WhatsApp Business API. WhatsApp Business helps upcoming businesses to streamline and expand their reach. The businesses are able to share their product images with a group of customers and promote the business occasionally (Bhat, 2021).

Various social media platforms can be used with different levels of penetration in different regions. Research conducted in Ghana, Kenya and Uganda among youths aged 18–25, living in peri-urban areas, with an income under US$ 2 a day found that young women in Uganda were using social media tools such as WhatsApp to engage in cross-border business in a way that would have been impossible without such tools (Bailur, Masiero, 2017). Women engaging in small businesses who cannot afford expensive advertising are able to advertise using social media tools (Bailur, Masiero, 2017). Drawing from a survey of 4,020 small and medium businesses across eight

59 Internet Users Statistics for Africa https://www.internetworldstats.com/stats1.htm
60 Statistics for Africa https://www.internetworldstats.com/stats1.htm
61 In the context of this chapter, the term 'business' encompasses registered business, sole traders and self-employed persons.

African countries, a 2021 study published by Genesis Analytics found that 65 per cent of the small and medium-sized businesses increased the use of social media and online messaging during the COVID-19 pandemic to communicate with customers, operate remotely, raise capital and make sales. Over half of the surveyed businesses in five of the eight countries reported that social media had helped the business to stay open during the pandemic.[62]

c. Taxing social media businesses

The growing use of social media to do business has implications for tax collection in developing countries. First is the consideration of non-payment of taxes due by social media businesses that may be less likely to be compliant given that they are harder to trace. Tax non-compliance is generally quite high in developing countries due to poor public service delivery and perceptions of corruption, which lead to low tax morale (Rosid, Evans, Tran-Nam, 2018). This attitude is likely to be heightened among business on social media platforms. This is for various reasons, including the fact that they generally may not rely directly on facilities such as infrastructure or regulation provided by the government in order to do business. The result can be a general apathy towards taxation.

Second is the concern that social media businesses can erode some of the traditional tax base. Traditional bricks and mortar businesses have fixed premises, hire employees, and have other overhead costs that subsequently become income for others, which is taxed. This is often lacking with social media-based businesses, which may be mobile or carried out at private residences and undisclosed locations. Customers can engage the service provider online and agree on terms, then the provider visits their premises or vice versa and delivers the service. Certain services can also be delivered via social media or electronically. Services like secretarial services, copyediting and others might be performed without any physical interaction.

The main challenge of social media-based businesses from a tax perspective is the general absence of clear regulations about how to tax them. Tax administrations generally design processes for bricks and mortar businesses. These are anticipated to have clear locations with inventories that can be inspected. Businesses run on social media defy this traditional paradigm, which limits the applicability of traditional approaches.

There is limited understanding and knowledge about the importance of paying taxes among persons engaged in online business on these platforms. Many of those engaging in such businesses do so informally and without much consideration of their tax obligations and, as a result, do not comply in paying taxes. Social media businesses are often perceived more as hobbies or passive income rather than formal businesses. As such, it is possible for individuals to not recognize or be fully informed of their tax obligations.

From a tax perspective, these types of businesses are problematic, because tracking them presents a number of challenges. A tax authority would have to deploy considerable resources physically or searching remotely online to trace such businesses. From the tax authority's viewpoint, though the individual amount owed by each social media business may be small, collectively the tax owed can be substantial. The question then will be the utility of using traditional methods for tracing taxes from businesses. Studies have shown that difficulty in detecting, or tracing taxpayers leads to lower compliance (Oyebola, 2021).

The next challenge is that even if businesses are identified, the use of tax audits as a tool of enforcement may be unrealistic,

[62] See more: https://genesis.imgix.net/uploads/files/GENESIS_Unlocking-Africas-Potential-2021_Report-FINAL.pdf

because auditing them would require using indirect methods and third-party information, e.g., bank transactions, purchases and sales. Correctly assessing off the-books income requires unusually skilled auditors using techniques such as retail mark-up methods, proof of expenditures, analysis of bank deposits, and net worth analysis. However, extensive third-party information is not readily available.

Further, with electronic payments developed, many transactions may be initiated and concluded electronically through facilities such as mobile money. This adds another layer of complexity to tracing transactions.

d. Policy and administrative approaches

In such circumstances, a whole new creative approach to taxation is necessary. The following points include proposed policy and administrative measures that can be adopted.

Examining social media to track persons engaging in such businesses: This is a tedious approach, but it may be one of the more effective methods of tracking and tracing such businesses. Tax authorities have already adopted monitoring social media posts for tax compliance purposes, so this is not out of the question. More sophisticated tools could be deployed if it is determined that the revenue gain is worth it. In December 2018, the Internal Revenue Service in the United States put out a request for social media research tools available in the marketplace. It hoped to engage a vendor-supplied tool that would allow the agency to access publicly available social media to "expedite IRS case resolution for existing compliance cases, providing a more efficient way of identifying resources and assisting with the collection of known tax deficiencies, leading to increased collection of revenue involving unfiled tax returns and other tax liabilities." (Drumbl, 2021).

Tracking mobile money payments beyond a set frequency or threshold: The tax authority could set a number of mobile money payments, such as 50, and any phone number that receives more than 50 payments in a day can be reported to the tax authority to be investigated as a possible social media business. This may create challenges around the right to privacy, but these could be mitigated against by limiting what is disclosed. Disclosure can be limited to the fact that the transactions occurred without giving details of who made the payments.

Tracking persons who import items in bulk is another possibility: Many of those who subsequently sell goods online may import them. Such information will be easy for the tax authority to track and then follow up in order to ensure that relevant taxes relating to the goods have been paid. In the alternative, withholding tax can be collected at the point of importation or sale of certain quantities of products. This withholding tax can be claimed as a tax credit for businesses that are compliant with their tax obligations. Since the tax is meant to be on the margins of profit, it will have to be low so as not to affect the cash flows of legitimate businesses.

Administratively, a key solution is simplifying the registration process: A speedy online registration process would ease compliance for taxpayers who engage in online businesses as this is already their primary mode of doing business. For example, in Europe, the VAT Mini One Stop Shop (MOSS) was adopted to ease compliance. This is an optional scheme that allows a taxpayer to register and account for VAT - normally due in multiple European Union countries – in just one country.[63] This has been particularly useful for businesses providing online services in the European Union.

Taxpayer education can be expanded:

[63] See more: VAT on digital services (MOSS scheme), 7 July 2022

This is to ensure that social media-based businesses are made aware of their tax obligations. Tax authorities can take advantage of social media by offering information through social media platforms. For example, tax authorities can organize webinars on social media platforms such as YouTube and Facebook where videos can be shared. Social media campaigns have been noted by the OECD to be successful in taxpayer education.[64]

e. Conclusion

With the global rise of e-commerce, many tax authorities are beginning to pay attention to businesses transitioning to online trading. Social media-based businesses are, however, particularly difficult to track because social media are not primarily used for business. Nonetheless, tax authorities must pay attention to this emerging phenomenon and devise means of tapping into the revenues generated there.

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D. Global and Regional Organizations

1. Organisation for Economic Co-operation and Development (OECD): Global standards and guidance – The VAT Digital Toolkits to support VAT collection on e-commerce in developing countries[65]

a. VAT on digital trade – The need to safeguard revenue and prevent competitive disadvantages for domestic businesses

Value added taxes (VAT)[66] and other general consumption taxes are a critical revenue source for most developing countries. They represent around 30 per cent of total tax revenues on average in developing economies[67], notably ahead of corporate income taxes and personal income taxes. Safeguarding these crucially important VAT revenues in economies that are being transformed by digitalization and globalization is a priority for many governments in developing countries. Action is required not only to generate the revenues necessary to finance sustainable development and to strengthen domestic resource mobilization, especially after the COVID-19 crisis, but also to minimize competitive distortions between foreign online sellers and local physical stores.

Global e-commerce sales were estimated at US$ 26.7 trillion in 2019, equivalent to 30 per cent of that year's global domestic product (GDP), with business-to-consumer (B2C) e-commerce sales estimated at US$ 4.9 trillion in 2019, up 11 per cent compared to 2018, representing approximately one-fifth of all e-commerce (UNCTAD, 2021). About half of the top 20 economies with the highest volume of B2C e-commerce sales in 2019 were developing and transition economies (UNCTAD, 2021). It is estimated that 1.48 billion people, or a little over one quarter of the world's population aged 15 and older, made purchases online in 2019, which represents a 7 per cent increase compared to the previous year (UNCTAD, 2021). Research suggests that the number of online consumers has further grown to over 2 billion globally in

[65] Mr. Thomas Ecker, Policy Advisor, Organisation for Economic Co-operation and Development (OECD). This contribution builds on of the publications OECD/WBG/ADB (2022), VAT Digital Toolkit for Asia-Pacific, OECD Publishing, Paris, https://www.oecd.org/tax/consumption/vat-digital-toolkit-for-asia-pacific.htm and OECD/WBG/CIAT/IDB (2021) VAT Digital Toolkit for Latin America and the Caribbean, OECD Publishing, Paris, https://www.oecd.org/tax/consumption/vat-digital-toolkit-for-latin-america-and-the-caribbean.htm.The additional opinions expressed and arguments employed herein are those of the author and do not necessarily reflect the official views of the OECD or of its member countries. Some components of the Toolkits are reproduced in this contribution.

[66] VAT in this contribution refers to any national tax that embodies the basic features of a value added tax as described in Chapter 1 of the International VAT/GST Guidelines, by whatever abbreviation it is known (e.g., GST), i.e., a broad-based tax on final consumption collected from, but in principle not borne by, businesses through a staged collection process, whatever method is used for determining the tax liability (e.g., invoice-credit method or subtraction method).

[67] The unweighted average revenue of general taxes on goods and services as a percentage of total taxation is 29.56 per cent for the 79 economies classified by UNCTAD as developing economies (UNCTAD (2022), Country classification, UNCTADSTAT, https://unctadstat.unctad.org/EN/Classifications/DimCountries_All_Hierarchy.pdf, generation date: 21 April 2022) and for which data are available in the OECD Global Revenue Statistics Database (OECD), Global Revenue Statistics Database, https://www.oecd.org/en/data/datasets/global-revenue-statistics-database.html; 2019 data for the African economies and 2020 data for the others).

2021 (Statista, 2022). COVID-19 "stay-at-home" restrictions increased mobile phone ownership and mobile Internet access, as well as greater use of digital payment solutions, and have been among the main factors fuelling this e-commerce growth.

The strong growth of digital trade has created significant challenges for VAT systems globally, including in developing economies. These main VAT challenges are:

- The strong growth in online sales of services and digital products (applications and "in-app" purchases, streaming of music and on-demand television, gaming, ride-hailing, accommodation rental, among others), particularly by non-resident suppliers to private consumers. Traditional VAT rules often lack effective provisions to impose VAT on supplies that do not require the supplier to be physically present in the jurisdiction of its customers, leading to no or inappropriately low amounts of VAT being levied.
- The strong growth of the volume of imports of low-value goods from online sales, on which VAT is often not collected effectively under the existing rules and procedures and that therefore enter jurisdictions under- or untaxed.

Where no effective VAT reform to address these challenges is implemented, the continuous growth in digital trade causes increasingly important VAT revenue losses and unfair competitive pressure on domestic businesses that cannot compete against the continuously rising volumes of online sales by non-resident suppliers on which no or an inappropriately low amount of VAT is levied.

b. OECD standards and recommendations as a global response to levy VAT on digital trade

Governments worldwide have recognized that the VAT challenges created by the digitalization of the global economy require a globally coordinated response. Only such a response can maximize compliance levels by online suppliers that often do not have any physical presence in the taxing jurisdiction, support the effective international co-operation in tax administration and enforcement, and minimize the risks of trade distortions without creating an undue compliance burden for online suppliers.

In response, the Organisation for Economic Co-operation and Development (OECD) has delivered a comprehensive internationally agreed policy framework for addressing the VAT challenges of the digital economy, reflecting a broad consensus on effective and efficient solutions among tax authorities worldwide. It results from an intense and inclusive policy dialogue among tax authorities from OECD member countries and non-member economies and key international and regional organizations over the course of several years. This policy framework was endorsed by participants in the Global Forum on VAT representing over 100 jurisdictions and international organizations worldwide. The core standards and principles that lay the foundation for this policy framework are included in the International VAT/GST Guidelines (OECD, 2017a) and in Addressing the Tax Challenges of the Digital Economy: Action 1 - 2015 Final Report (OECD, 2015). These standards have been complemented with detailed technical guidance on the design and implementation of mechanisms for the collection of VAT from non-resident online suppliers (OECD, 2017b), on the role of online marketplaces and other digital platforms in the collection of VAT on online sales (OECD, 2019), and the VAT treatment of the sharing and gig economy (OECD, 2021).

These OECD standards and recommendations have already been implemented in over 70 jurisdictions worldwide, and this number continues to increase as many jurisdictions are currently implementing or considering their implementation (OECD, 2022). Overall, very positive results have been reported in respect of VAT revenue collected, compliance levels and the reduction of competitive distortions between brick-and-mortar stores and online vendors.

c. Main elements of the OECD policy framework to levy VAT on digital trade

The OECD policy framework for addressing the VAT challenges of digital trade is based on four key elements:

1. Creating the legal basis for jurisdictions to assert the right to impose VAT on international digital trade.

In respect of online sales of services and digital products, this is achieved by implementing the internationally agreed standard for determining the "place of taxation" by reference to the location of the customer. This allows a jurisdiction to impose VAT on these supplies, including sales of digital services and digital products, irrespective of whether or not the supplier is located in that jurisdiction.

2. Ensuring the efficient collection of VAT on online B2C sales of goods, services and digital products from non-resident suppliers through simplified VAT registration and collection mechanisms.

High compliance levels and efficiency in collecting the VAT on online B2C sales of services and digital products from non-resident suppliers is achieved by imposing a VAT collection obligation on these suppliers and simplifying VAT registration and compliance for these suppliers supported by online processes, with obligations remaining limited to what is strictly necessary for the effective VAT collection.

Such a "vendor collection regime," supported by simplified compliance processes, can be extended to online supplies of low-value imported goods, by imposing an obligation upon non-resident suppliers and digital platforms to collect the VAT on these supplies at the point of sale and to remit this VAT to the tax authority in the jurisdiction of importation. This allows jurisdictions to ensure that these goods can no longer be imported and/or sold free of VAT (e.g., due to a VAT low-value consignment relief), while significantly enhancing the efficiency of VAT collection by relieving customs authorities of the burden of collecting VAT at the border and reducing opportunities for fraud from undervaluation of goods at importation.

3. Boosting the efficiency of VAT collection by requiring digital platform operators, which dominate global digital trade, to collect and remit the VAT on sales carried out through their platforms.

A requirement for digital platform operators to collect and remit the VAT on the online sales made through their platform by non-resident online suppliers ("full VAT liability regime") is the most effective and efficient means of ensuring high levels of compliance with VAT obligations on the online sales that non-resident suppliers make through these platforms. This can be complemented with reporting requirements, including requirements addressed to sharing and gig economy activities.[68]

4. Enhancing VAT compliance by non-resident online suppliers and digital platforms through effective communication and by implementing a modern risk-based compliance management and enforcement strategy, supported by robust administrative co-operation.

In particular, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD/Council of Europe, 2011) is the most comprehensive multilateral instrument available for all forms of administrative co-operation between jurisdictions in the assessment and collection of taxes, including VAT. Such co-operation can encompass the exchange of information, including automatic information exchanges, and assistance in the recovery of foreign tax claims.

[68] See, for instance, the OECD Model Reporting Rules for Digital Platforms (OECD 2020), which can also be used for VAT purposes.

d. Region-specific VAT Digital Toolkits to support jurisdictions with reform to levy VAT on digital trade

To assist tax authorities in the design and implementation of robust policies for the application of VAT to digital trade based on internationally agreed standards and guidance, the OECD entered into a strategic partnership with the World Bank Group (WBG) to develop three regional VAT Digital Toolkits (Toolkits). These are comprehensive manuals covering every component of policy design and implementation of proven solutions for the successful collection of VAT on digital trade. This includes detailed guidance for the legislative design, the administrative implementation, the design of supporting infrastructure, and the enforcement of VAT digital policies in light of jurisdictions' specific needs and circumstances. Three Toolkits focus on three regions: Latin America and the Caribbean (OECD/WBG/CIAT/IDB, 2021); Asia-Pacific OECD/ WBG/ADB, 2022); and Africa (forthcoming). Each Toolkit has been developed in partnership with key regional organizations[69] and in close consultation with regional tax authorities to ensure that they take due account of the specific regional circumstances, needs and capacities and to ensure that the recommended solutions are properly tailored and capable of being implemented.

The Toolkits build on the internationally agreed standards and guidance delivered by the OECD, resulting from intense inclusive global policy dialogue with OECD member countries and non-member economies worldwide, and with international organizations and other relevant stakeholders, including the global business community and academia. They incorporate the experiences and best practices from tax authorities in jurisdictions that have already successfully implemented these standards.

The Toolkits include the following core components:

- Detailed guidance to support policy decisions and legal design of effective solutions for the application of VAT to digital trade based on internationally agreed standards and best practice experience, taking account of specific regional circumstances. This covers online trade in services and digital products, online sales of low-value imported goods, and the sharing and gig economy.
- Detailed practical manuals for the administrative and operational implementation of the recommended policy framework for the collection of VAT on digital trade. This includes the design of an effective regime to collect VAT from non-resident online suppliers and digital platforms, the development of an online portal for registration and payment of the VAT by online vendors, and the integration of these regimes into a tax authority's existing administrative and IT frameworks.
- Detailed guidance on strategies to enhance compliance by non-resident suppliers and digital platforms and to strengthen tax authorities' enforcement capacity. This includes guidance on effective communication strategies and on robust compliance risk management strategies to ensure compliance by non-resident online suppliers and digital platforms with their VAT obligations.
- Detailed and comprehensive checklists covering the main aspects of VAT reform directed at digital trade, including policy design, legal drafting, administrative implementation, IT-infrastructure, communication, and audit and enforcement.
- The Toolkits form part of the broader VAT capacity-building and technical assistance program of the OECD and its partners to support developing countries in their efforts to collect VAT on digital trade. For further information on capacity-building and technical assistance, please contact consumptiontaxunit@oecd.org.

[69] The regional partners for the VAT Digital Toolkits are respectively, the Inter-American Center of Tax Administrations (CIAT) and Inter-American Development Bank (IDB) for Latin America and the Caribbean; the Asian Development Bank (ADB) for Asia-Pacific; the African Tax Administration Forum (ATAF) for Africa.

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2. African Tax Administration Forum (ATAF): Tailoring legal reform for e-commerce taxation in African countries[70]

a. Introduction

Approximately 22 per cent of Africans have access to the Internet (International Telecommu- nication Union, 2021). Although this is the lowest connectivity rate of all the continents, Africa has the largest potential for Internet access growth (International Finance Corporation, 2017). The African Union, in collaboration with the World Bank, plans to connect every person, business and government in Africa to the Internet by 2030 (International Finance Corporation, 2017). As Internet access in Africa increases, e-commerce transactions in the form of B2B, B2C, and C2C are likely to increase exponentially. Existing Value Added Tax (VAT) legislation is, generally, inadequate to tax these transactions. This contribution highlights different factors for policymakers to consider in African countries for the collection of VAT on cross-border e-commerce transactions.

From the outset, policymakers must examine the extent of e-commerce transactions in the country. Where most transactions consist of B2B involving VAT registered businesses, the transactions are generally captured by an existing and effective reverse-charge mechanism that may render legislative changes unnecessary. When the number of cross-border B2C transactions is significant, policymakers must consider whether these transactions are captured by the existing VAT legislation. This contribution proposes recommendations for VAT compliance of B2C cross-border e-commerce transactions. It must be noted that there is no one-size-fits all approach. Each approach poses its own challenges and none of the approaches are flawless.

b. The Importance of defining e-commerce transactions

VAT systems distinguish between goods and services for time of supply and value of supply rules (Ebrill, Keen, Bodin, & Summers, 2001). Tangible goods traded domestically by electronic means generally fall within the scope of the relevant VAT legislation. Furthermore, cross-border B2B and B2C transactions for tangible goods do not present a VAT compliance threat, because these goods are taxed by customs when they enter the country. B2C cross-border trade in intangibles often escape the VAT net despite the existence of a reverse-charge mechanism. This is because most consumers are unaware of their VAT compliance liability in terms of the reverse-charge mechanism (Kabwe & van Zyl, 2021). As such, this contribution focuses on cross-border transactions in digital goods or services only.

Digital goods fall outside the scope of the definition of goods. The definition of services is generally wide enough to include digital goods. However, in respect of services, the VAT legislation in many African countries lacks specific place-of-supply rules. The place-of-supply rules are generally premised on the use-and-consumption principle (van Zyl, 2013). In the case of digital goods, the use-and-consumption principle is inadequate. For example, X lives in Ghana. While in transit, in Addis Ababa, en route to Johannesburg, she purchases an e-book and downloads it on her e-reader. She reads Chapter One in Addis Ababa. She reads Chapters Two to Four on the aeroplane. She reads Chapter Five in Johannesburg and the remainder of the book in Ghana upon her return. In accordance with the use-and-consumption principle, the consumption of the book is chargeable with VAT in Ethiopia, South Africa, Ghana, and the country in which the aeroplane is registered.

[70] Prof. SP van Zyl, University of Pretoria (UP), Mr. Emeka Nwanko, Manager Domestic Taxes, African Tax Administration Forum (ATAF).

Considering the above scenario, specific place-of-supply rules for digital goods are essential. To ensure that the specific place-of-supply rules are applied adequately, digital goods and services (collectively and commonly referred to as electronic or digital services) must be defined in the VAT Act. Some jurisdictions refer to digital goods (Ghana) while others refer to electronic services (South Africa) and electronically supplied services (European Union) or e-services (Nigeria).[71] Digital goods can either be defined by way of a list of what constitutes digital goods or by way of a broad definition coupled with a list of services that are specifically excluded. It is advisable that the list of what constitutes and what is excluded from the list of electronic services are contained in regulations rather than the legislation itself. This is because regulations are not subject to the dragged-out parliamentary oversight compared to legislation. Technology changes rapidly. As such, the definition and the lists of exclusions and inclusions can easily be outdated. Where the definition is contained in a Regulation, an amendment can be executed more quickly compared to amending of legislation. A broadly agreed definition coupled with a list of exclusions may prevent the definition from getting outdated quickly.[72]

Policymakers must be mindful of exemptions, zero-rating and exclusion of certain services given the challenges in removing these concessions once they exist (Cnossen, 2019). Because terminology in regions differ, a Frequently Asked Questions (FAQ) page on the revenue authority webpage that contains descriptions of the technology specifically included and excluded is published and updated regularly is recommended. Ideally, the FAQ page must be published in English as well as the languages of the major trading partners of the country concerned.

c. Specific place-of-supply rules

Explicit place-of-supply rules enable tax authorities to impose VAT on transactions that would otherwise escape the VAT net. This is because the place-of-supply rules establish which transactions are deemed to take place in the jurisdiction concerned. As explained above, where the place-of-supply is unidentifiable, then it becomes impractical, ineffective and inefficient to implement the relevant legislation.

The destination principle is typically encapsulated in the legal framework through place of consumption or utility provisions in the VAT Act. However, the utility provision may not be suitable for digital goods or services because of its intangibility and mobility. This has resulted in the place of residence to serve as a proxy for place of consumption. For legal and operational clarity, the proxy of place of residence can be captured in the legal framework through outlining the indicators to be used in establishing the place of residence of the recipient of the supplies.

Consequently, three indicators can be considered in respect of establishing the place of supply of electronic services:

i. The place where the recipient resides;

ii. The place where payment originates; or

iii. The place where the recipient has a fixed address or business or establishment.

Some jurisdictions require a combination of these indicators to be present while

[71] For the purpose of this contribution, the terminology used is the same as contained in the legislation in the specific country of reference.

[72] For example, in 2014, when South Africa amended the VAT Act 89 of 1991 to include electronic services, the definition consisted of a list of standard digitally supplied services. However, the types of services were not defined, which resulted in confusion. Accordingly, in 2019, the definition of 'electronic services' was broadened to mean "any services supplied by means of an electronic agent, electronic communication or the Internet for any consideration." Specifically excluded from the definition are educational services supplied from a place in an export country and regulated by an educational authority in terms of the laws of that country, telecommunications services, and certain intra-group supplies.

others require any of the indicators to be present. Applying a combination of the indicators can be restrictive for the suppliers, because the information or indicators may not be present or easily established.

While the requirement to use any of the indicators is not restrictive, it may present potential double taxation or double non-taxation for transactions that have indicators present across more than one jurisdiction. It is advisable to adopt a rule that is consistent with most jurisdictions for coherency and ease in determining place of supply. The supplier must not be burdened with determining the place of supply with absolute certainty. Rather, where a foreign supplier has verified that the customer has provided consistent information with a valid credit card, billing address, and IP address, all indicating the same address as residence, the supplier must be deemed to have discharged itself of the duty to determine the location of the recipient. Similarly, where the supplier has verified that the customer has provided consistent information indicating where the payment originates, the supplier must be deemed to have discharged itself of the duty to locate the origin of the payment. Where the supplier has followed the indicators of determining the place of supply satisfactorily, the supplier cannot be held accountable where the place of supply has been determined incorrectly. For clarity and ease of compliance, detailed guideline specific to establishing the place of supply of electronic services should be provided by countries.

Table 9
Determination of Place of Supply for Digital Goods

Country	Determination of Place of Supply for Digital Goods
South Africa	In South Africa, the place-of-supply rules are deduced by the reading together of the charging provision and the definitions of “electronic services,” “vendor,” and “enterprise.” Furthermore, in the context of “electronic services,” a foreign supplier of electronic services is deemed to conduct an enterprise in the Republic if it satisfies any two: i) the recipient of the services is resident in South Africa; ii) the payment for the electronic services originates from a bank in South Africa; and iii) the recipient has a business, postal or residential address in South Africa.
Nigeria	Place of supply for electronic services is provided for under Guideline 15 of the Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers NO. 2021/19 as below. 15.1 Nigeria’s place of supply rules are built on place of consumption. As such, services consumed or otherwise utilised in Nigeria by individuals or businesses are taxable in Nigeria. 15.2 Subject to the Illustrations in paragraph 15.3 below, digitally supplied services are consumed or utilised in Nigeria where: (a) the recipient of the supplies resides in Nigeria, as evidenced by the billing, business, residential or postal address in Nigeria; (b) it can be inferred from information provided that the consumers usual place of residence is Nigeria;

Country	Determination of Place of Supply for Digital Goods
	(c) the customer is a company incorporated under any law in Nigeria; (d) the customer's URL, geo-location or IP address is in Nigeria; (e) it is physically performed in Nigeria; (f) there is any other evidence suggesting that the supply is consumed or utilised in Nigeria or that such supplies can only be utilised in Nigeria; or (g) a place of consumption cannot be established for the supplies, using any of the above indicia, the place of consumption is Nigeria if the payment for such supplies originates from a bank or any other financial institution licensed in Nigeria pursuant to Nigerian laws.
Kenya	Regulation 21 of The Value Added Tax (Digital Marketplace Supply) Regulations, 2020 provides for when the supply of digital services is deemed to have been made in Kenya. A supply on a digital marketplace shall be deemed to have been made in Kenya where the recipient of the supply is in Kenya. In determining whether the recipient of a supply is in Kenya, the Commissioner shall consider— (a) whether the payment proxy, including credit card or debit card information and bank account details of the recipient of the digital supplies, is in Kenya, or (b) whether the residence proxy including the billing or home address or access proxy including Internet address, mobile country code of the SIM card of the recipient is in Kenya.
Mauritius	Section 14B of the Value Added Tax Act, 1998 provides that VAT shall be levied on the supply of digital or electronic service supplied by a foreign supplier to a person in Mauritius.

d. Collection mechanism

- Collection Mechanism: VAT compliance for non-residents engaged in cross-border supply of digital goods or services Simplified compliance regime

As an interim measure, the OECD recommends that foreign suppliers of electronic services must register as VAT vendors in the jurisdictions where they conduct an enterprise (OECD, Addressing the Tax Challenges of the Digital Economy, 2014). In line with the OECD proposal, in 2014, South Africa was the first African country to require foreign suppliers of electronic services to register for VAT in South Africa. At present, Kenya (The Value Added Tax (Digital Marketplace Supply) Regulations, 2020), Ghana (Value Added Tax Act 2013, Act 870), Nigeria (Finance Act 2019), Uganda (Value Added Tax Act | Cap 349), Zambia (Value Added Tax Act, 1995), Mauritius (Value Added Tax Act, 1998), and Tanzania (The Value Added Tax (Registration of Non-Resident Electronic Service Suppliers) Regulations, 2022) have introduced similar registration requirements. In terms of the registration model, the foreign supplier of electronic services must identify, by way of place-of-supply proxies, where the consumption is deemed to take place. The foreign supplier levies VAT on the transaction in accordance with the VAT rate in the destination country. The foreign supplier is required to be VAT compliant in the jurisdiction where it is registered as a foreign VAT supplier of electronic services. In this regard, it is recommended that the VAT threshold that applies to domestic vendors apply to foreign vendors equally.

- Distinction between B2B and B2C

Cross-border B2B transactions are generally captured by the reverse-charge mechanism in the traditional VAT systems. In the case of B2B transactions, the recipient of the service is entitled to an input VAT deduction on import. As such, the recipient is generally VAT compliant. For cross-border supply of electronic services, some jurisdictions make no distinction between B2B and B2C transactions while others do. The absence of a distinction between B2B and B2C typically maintains consistency with the jurisdictions' VAT system and alleviates the burden on the foreign supplier to determine the VAT status of the recipient. The removal of the burden of determining the VAT status of the recipient is because the VAT collection mechanism is determined by the VAT status of the recipient as shown by the compliance regimes being implemented by most jurisdictions. An all-inclusive collection mechanism (no distinction between B2B and B2C) usually requires the vendor (foreign supplier) to collect and account for VAT on all transactions, while a B2C compliance regime for cross-border supply of electronic services typically requires the vendor to collect and account for VAT on B2C transactions only. It must be noted that where no distinction is made between B2B and B2C transactions, where the transaction has been charged with VAT by the seller, the reverse-charge mechanism does not apply.

- Simplified registration

A simplified registration regime for foreign suppliers of electronic services that includes the following should be considered.

  - The foreign vendor is not required to have a fixed place of business in the country of supply.
  - The foreign vendor should be able to register online with minimal information requirements, or it can have the option (should not be compulsory) to appoint an agent to register on its behalf.
  - The foreign vendor is not required to have a bank account in the country of supply.

Modern business models allow various micro, small and medium enterprises to supply their goods and services via a platform (or intermediary). The platform generally allows the business to trade on its website. The platform facilitates the transaction and the seller supplies to the customer directly. Individually, the businesses do not meet the VAT threshold. Collectively however, via the platform, the total supplies exceed the VAT threshold. It is recommended that where the platform facilitates the transaction (that is when the platform controls and facilitates payment), the platform must register for VAT and levy VAT on behalf of the individual businesses that make supplies via the platform. Where the platform is registered for VAT already, the individual supplier must not be required to register, even if its supplies exceed the threshold. It has been recommended that the registration of platforms can also be extended to the supply of low-value tangible goods (OECD, The role of digital platforms in the collection of VAT/GST on online sales, 2019). While this will alleviate the bottleneck of low-value goods at customs, it creates an additional administrative burden on the platform. This is because the platform is required to classify the products sold, allocate the correct customs tariff in accordance with the tariff schedule of the country of destination, add additional excise taxes (where applicable) and levy VAT.

- VAT compliance under the simplified registration model: Invoicing

It is recommended that foreign vendors who are required to register in the country of supply must be allowed VAT compliance concessions to alleviate the administrative burden associated with registration. First, the vendor must not be required to display prices on its website, mobile app or like advertising space in the domestic currency inclusive of VAT. It is only at check-out where the vendor must be required to display VAT at the relevant rate. Second, the vendor must be allowed to issue simplified electronic invoices. A simplified invoice consists of the seller's details, the customer's details, the product description, and VAT. It should not be required to reflect amounts in the local currency. The simplified invoice should contain information that the seller would have access to under its normal business process and should be legally acceptable as a VAT invoice. Third, the invoice may be issued electronically. Fourth, clear rules must exist for the time and method of storage of electronic invoices. Importantly, cognisance must be had for concomitant legislation to avoid a conflict of laws. For example, in South Africa, the Value Added Tax Act 89 of 1991 (as amended) does not require a foreign vendor to display prices in South African Rand (ZAR) inclusive of VAT. Yet, the price displayed must indicate that the transaction may be subject to South African VAT. The Electronic Communications and Transactions Act 25 of 2005, which applies whenever a South African is a party to an electronic agreement, requires the seller to display the price in ZAR and to indicate any taxes that may apply, also in ZAR.

- VAT compliance under the simplified registration model: VAT returns and VAT payments

Further compliance concessions relate to VAT returns and payment of output VAT. It is recommended that foreign vendors are required to submit quarterly VAT returns instead of monthly or bi-monthly VAT returns. This is to reduce the compliance burden considering that supply of electronic services, especially B2C, can be high volume, low value, and foreign vendor are likely to be VAT compliant in multiple jurisdictions. The VAT return information requirements should be simplified and minimal. It should be restricted to only information necessary for the computation of the VAT due. It is recommended that the quarterly returns are filed within twenty-five to thirty calendar days of the end of the corresponding quarter. The returns filing should be accompanied with proof of payment. In South Africa, foreign registered vendors must account for VAT bi-monthly. However, if the taxable supplies exceed ZAR 30 million, VAT returns must be submitted monthly. VAT must also be paid in South African Rands. In Nigeria, non-resident suppliers are to file monthly returns with payments made in Nigerian Naira, United States Dollar, Great British Pounds or Euro. In Kenya, digital marketplace suppliers are to file returns and remit VAT on a monthly basis. In this regard, it is recommended that the vendor must be allowed to transfer the VAT due to the relevant revenue authority in United States Dollars (or in the currency of the country of origin or incorporation) by way of SWIFT payment. For ease of compliance, the vendor should not be required to convert payment to the local currency.

- VAT compliance under the simplified registration model: Input VAT

Typically, the simplified registration regime is a payment-only regime. Some jurisdictions provide foreign vendors an alternative of registering under the general VAT regime (full registration with no concessions) to enable them to claim input VAT. Input VAT claims by a foreign registered vendor supplier of electronic services must be limited to input VAT incurred in the country of supply. It must be noted that the vendor would be entitled to an input VAT deduction in the country of incorporation for input VAT incurred in the making of taxable supplies in that country (including the electronic services that are exported). To prevent fake vendor registration, it is recommended that input VAT deductions should not exceed any output VAT liability. Where the inputs exceed outputs, the input VAT credit must roll-over to the next period of assessment. No pay-out of input VAT credits to foreign vendors should be made.

e. Alternative compliance methods: Split-payment

In terms of the split-payment model, the financial institution that facilitates the international transaction is required to identify its customer's location, identify the transaction, and add VAT to the purchase price based on the VAT rate in the country where the customer is located (in accordance with the deemed place-of-supply proxies listed in paragraph 2 above). The financial institution debits the customer's account for both the purchase price and VAT. The payment is then split, whereby the purchase price is relayed to the seller and the VAT is relayed to the relevant revenue authority. The following factors must be considered before split-payment is appraised.

- International financial institutions do not have the means to identify the customer's location with accuracy nor are they familiar with the VAT legislation in the jurisdiction of deemed consumption.
- Domestic financial institutions can identify domestic customers, and they are familiar with domestic VAT legislation. Hence, they are better equipped to identify the transaction, VAT rate, and deemed place-of-supply rules.
- In the case of the supply of goods, the goods must not be taxed again by customs upon entry in the country.
- Domestic and/or international privacy laws may prevent the financial institution from disclosing the transaction and transaction value to the revenue authorities.
- Who bears the burden of submitting VAT returns (if VAT returns are required to be submitted) where the financial institution collects VAT as collecting agent?
- What happens if VAT was levied when it should not have been levied? Is the recipient of the supply entitled to a VAT refund? If so, what is the administrative burden on the fiscus of processing such refund claims?

At the time of writing, the split-payment system applies in Nigeria in respect of domestic supplies (Vertex, 2020). As the split-payment system remains to be tested in respect of cross-border supplies of electronic services, no views in favour or against the model can be expressed.

f. Other considerations

- **Repair/Upgrade of digital goods**

Where imported digital goods are repaired or upgraded by the foreign supplier of the digital goods under guarantee or for no consideration, the supply must not attract VAT. Where the repair or upgrade is completed by a local agent of the foreign supplier and where the foreign supplier does not charge the recipient a fee for the repair or upgrade, it is recommended that the supply by the local agent is deemed to be a supply of exported services to the foreign entity.

- **Legal Instrument**

An unambiguous, simple and clear legal framework is required for the consideration of factors put forward in this contribution to be implemented successfully. Consequently, the type of legal instrument used to bring the regime into force should be considered carefully. While the baseline provisions may be captured in an amendment to the VAT Act, jurisdictions typically opt for use of Regulations to provide further legal clarity. In the case of the latter, it is important to ensure that the use of a regulation is appropriate, in line with the jurisprudence of the jurisdiction and will not be subject to challenge. Regulations have sometimes been challenged constitutionally. Some arguments suggest that the implementation of Regulations ignores the separation of powers because it usurps the powers of parliament in favour of the legislator. To avoid the Regulations being challenged constitutionally, the enabling provisions should be contained in the legislation, while the Regulations provide how the enabling provisions are enforced.

g. Conclusion

The current VAT legislation of African jurisdictions does not provide extra-territorial power to enforce foreign vendor registration, to collect outstanding VAT from foreign vendors, or to enforce penalties and interest. In the absence of multilateral treaties and information exchange treaties, extra-territorial enforcement remains challenging. However, it is likely that the reputational damage from bad publicity might encourage foreign suppliers of "electronic services" to be VAT compliant in the country of supply (Spamer & Moonsamy, 2018). Well-known multinational corporations cannot afford to be associated with tax non-compliance. Another option is to disallow input VAT deductions in the hands of domestic VAT vendors who make use of non-compliant foreign vendors. Similarly, deductions for income tax purposes in respect of digital goods supplied by non-compliant foreign suppliers to domestic taxpayers may be denied. Of course, this requires extensive auditing and close co-operation between different departments in the tax administration.

Finally, that the reverse-charge mechanism applies as a backdrop is recommended. For example, in South Africa, where the foreign supplier of "electronic services" is registered for VAT (or ought to be registered for VAT), but fails to collect and remit VAT, the recipient of the "electronic services" by default becomes liable to self-assess the transaction and remit VAT. This is also applicable in Nigeria.

Because the African market is largely untapped in respect of e-commerce, businesses are eager to expand. Revenue authorities who provide concessions for these businesses by making VAT compliance easy and cost-effective tend to be more successful in ensuring VAT compliance.

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3. Inter-American Development Bank (IDB): How can development partners assist to facilitate reforms of cross-border e-commerce taxation; the Latin American experience[73]

a. Introduction

Updating VAT systems to the digital economy is needed for two reasons: stopping the loss of revenue, currently as much as US$ 3 billion per year in Latin America (Pineda – González, 2021), and protecting the integrity of the VAT, the most efficient of all taxes in many developing countries, and certainly so in Latin America (OECD et al. 2022). But countries willing to achieve these goals run the risk of believing this is just another ordinary reform. This is not the case; a digital VAT transformation is a multi-layered process involving legislation, administration, and engagement with the private sector. In fact, tax administrations face a challenge they have never confronted before: addressing taxpayers that are domiciled beyond the countries' borders, who do not have a permanent establishment therein, and often are large global corporations. Surmounting this difficulty calls for new instruments, skills and even a change in tax administrators' mindsets. Carrying out such a cultural change may be difficult for developing countries, which is where support from international partners is required, and development banks are ideally placed.

This contribution discusses the challenges presented to countries when designing and implementing a system to effectively secure the stream of revenue corresponding to cross-border B2C e-commerce, arguing why regional development banks are a good resource. To illustrate the case, we refer specifically to the IDB and Latin America.

b. Taxing digital consumption

Digitalization has reshaped our social interactions. The way we relate to each other, work, shop and enjoy our leisure time is often supported by Internet connected

[73] Mr. Ubaldo Gonzalez de Frutos, Lead Tax Specialist, Inter-American Development Bank.

devices. Insofar as these interactions involve consumption of online goods, services and intangibles, a taxable Digital VAT event will emerge, and countries must provide certainty about the applicable regulation and secure the tax due. Digitalization of consumption emerged in the late nineties and accelerated in the 2000s, fuelled first by social networks, and later by digital platforms where consumers can purchase all sorts of goods and services.

The disruptive change in consumer behaviour was not immediately replicated by a change in tax law and administration, partly by design (the US passed the *Internet Tax Freedom Act* in 1998), partly by inertia (for a long time, the digital share of the market was not large enough to propel policy reforms). However, when the digital market developed to a point where the loss of revenue became significant, and local businesses began to feel the pressure from larger, foreign competitors, a change in policy direction was observed. Two events marked the watershed: first, the OECD report on the Tax Challenges of the Digital Economy (2015) presented a thorough analysis of the twin implications of the growth of e-commerce (loss of revenue and damage to competition to the detriment of brick-and-mortar shops); and second, the US Supreme Court decision in *South Dakota vs. Wayfar, Inc.* (2017) paved the way for the repeal of the *Internet Tax Freedom Act* in the US.[74]

These events triggered VAT reforms all over the world, including Australia, New Zealand, Switzerland, Norway, and the European Union. Although some Latin American countries have already taken steps towards taxing digital services (Jorratt 2020, Annacondia and Alarcon, 2021), the depth and breadth of these reforms generally fall short of reforms in OECD countries. This is owed partly to the fact that Latin American societies are less digitalized, hence the size of the problem is smaller, partly to the lack of capacity to effectively design and implement a reform. Despite this, it is important to maintain the integrity of the VAT system in Latin America and the Caribbean, since it is the main source of tax revenue for many countries, representing approximately one-third of the region's total tax revenues (OECD et al. 2022). The healthy performance of the region's VAT regimes is crucial for LAC countries' domestic resource mobilization.

c. The multiple facets of a digital VAT reform

A digital VAT reform operates at several levels: the legal regime, the administrative mechanisms, and engagement with the private sector:

- **Legal aspects.** Changes in law and regulations are required because, despite the consensus at the international level about the principles for allocating VAT taxing rights in a cross-border setting, as reflected in the International VAT-GST Guidelines (OECD, 2017a), the principle that the indirect tax should follow consumption is not clearly articulated in domestic laws. Moreover, the current place of taxation for VAT has been defined by reference to the residence of the provider. Moving forward, the place of taxation will be the place where the customer resides (or where the act of consumption takes place). This is because in a traditional economy, the residence of the provider served as an accurate proxy of the place of consumption. In an open, digitalized economy, this is no longer the case. Another important adjustment is the creation of a direct relationship between remote providers and platforms and the tax administration of the country of consumption. Relationships of this kind (for instance, on direct taxes) were supported by a mandatory intermediary, a tax representative. This is no longer required, or even practical (OECD, 2017b). Tax administrations are beginning to engage directly with remote taxpayers, challenging well-established principles upon which

[74] More on this in González de Frutos, U (2022).

the relationship with taxpayers was based, most notably jurisdiction. Developing relationships with companies that are outside the reach of their jurisdictional powers pushes the limits of tax law, especially when it comes to enforcement. So far, voluntary compliance and mutual administrative assistance are the basic tools to substitute for jurisdictional powers. Tax law is likely to continue to evolve towards a new form of legal relationship between private citizens/ companies and remote authorities, however.

- **Administrative reforms.** Engaging with foreign and remote taxpayers requires reforms at the level of administrative processes and tools. An all-digital interface needs to be built and administered, preferably in a foreign language and foreign currency. Enforcement and audits will also be challenging, with a highly sophisticated environment (bits as a commodity) adding complexity to the physical distance, language, and cultural barriers, with the lack of general jurisdictional powers to engage directly with foreign taxpayers as the backdrop.
- **Dialogue with stakeholders.** Last, but not least, the reform needs to engage stakeholders at an early stage to succeed. Governments are advised to open conversations with digital companies and other interested parties as early as possible, to ensure that the envisaged reform is feasible and supportive of voluntary compliance. Once co-designed, authorities need to provide enough time for taxpayers to adapt and digital customers to understand why their consumption is liable to VAT.

d. The Latin American experience

Digital consumption is growing in LAC. This trend continued to emerge in the 2010s, but was accelerated by the pandemic, with impressive growth figures aggravating the challenges of taxing digital services and the importation of low-value goods. LAC countries began adapting their VAT rules to capture services provided by foreign suppliers, with the Bahamas as a pioneer in 2015, followed by Uruguay, Argentina and Colom¬bia in 2018, Barbados and Costa Rica in 2019; Chile, Ecuador and Mexico in 2020, and Paraguay in 2021. Other countries such as the Dominican Republic, Panama, Peru, Honduras, and Bolivia are considering reforms to tax digital services (Annacondia and Alarcon, 2021). Tax reforms have focused on creating new taxable events (the provision of digital services), expanding the scope of taxable persons to non-resident suppliers, adopting simplified registration and pay-only procedures for non-established taxpayers, defining the role of financial intermediaries in the collection of the tax (either as the main mechanism as in Argentina, or as the fallback mechanism as in Colombia or Ecuador), developing criteria for defining on-the-spot services, and sanctions. Other reforms that should follow are those related to the import of low-value goods and the role of foreign digital platforms as intermediaries in the provision of local services such as accommodation or passenger transport.

e. The VAT Digital Toolkit for Latin America and the Caribbean

Mindful of the magnitude of the challenges, a group of development partners[75] came together to build a toolkit to support countries. The VAT Digital Toolkit for Latin America and the Caribbean (IDB-OECD-WB-CIAT, 2022) provides detailed guidance to assist LAC tax authorities in the design and implementation of robust policies for the application of VAT to digital trade. The Toolkit covers the core components of a comprehensive VAT strategy directed at the main types of digital trade and e-commerce,

[75] The Organisation for Economic Co-operation and Development (OECD), the World Bank Group (WBG), The Inter-American Center of Tax Administrations (CIAT) and the Inter-American Development Bank (IDB).

particularly the online sales of services, intangibles, and goods to private consumers by foreign businesses, and digital platforms that often have no physical presence in their consumers' jurisdiction. It provides policy advice to support tax authorities' decision-making and detailed practical guidance and manuals for the legislative design, the administrative implementation and operation, and the enforcement of VAT digital policies in light of jurisdictions' specific needs and circumstances. A similar toolkit is available for the Asia Pacific Region (OECD, 2022) and is near completion for Africa.

The Toolkit is a comprehensive work covering all the layers described above. It is not prescriptive, but rather provides advice and guidance on the possible approaches, based on the internationally agreed standards and best practice approaches. Whenever the IDB provides technical assistance to countries implementing Digital VAT reforms, we use the Toolkit to help tax authorities understand the depth and breadth of the reforms and advise them to use it as guidelines when drafting legislation, designing procedures, and engaging with the private sector. In addition, the Inter-American Center for Tax Administration developed, with the support of the Norwegian Agency for Development Cooperation, a digital tool called DEC – Digital Economy Compliance System – that provides an excellent resource to implement the front-office procedures at virtually no cost for the country. The content and structure of the toolkit are detailed in Box 9.

Box 10
VAT Digital Toolkit - Structure for the LAC Region

Section 1 – Background

Section 2 – Economics of Digital Trade

- Analytical guide on e-commerce business models and processes, from a VAT policy and operational perspective.
- It includes analyses of sales and delivery processes, the role of the relevant actors in these processes, the infrastructure employed in digital trade.

Section 3 – Policy Recommendations

- Guidance and concrete models for the legislative design of effective measures for the collection of VAT on e-commerce sales and digital trade, based on internationally agreed standards and best practices, covering domestic as well as cross-border trade in goods, services and intangibles.
- Covers all the key areas of digital trade that create challenges for VAT policy and adminis- tration, i.e., services and digital products (3A), online sales of goods (3B) and the Sharing/Gig Economy (3C).

Section 4 – Implementation of the recommended policies

- Guidance on the concrete implementation and operation of effective mechanisms for the collection of VAT on services and intangibles (4A) and online sales of goods (4B).

- It includes a comprehensive implementation strategy and roadmaps, covering all the key operational aspects down to the level of concrete practical implementation, including aspects such as building registration and filing processes, VAT collection and remittance processes, communication and other related taxpayer services, IT infrastructure development and governance framework.

Section 5 – Audit and Risk Management

- Guidance on effective audit and administrative risk management strategies and processes, including concrete measures to tackle VAT fraud associated with online trade.
- Guidance on potential avenues for regional cooperation based on successful initiatives in other regions

Source: IDB-OECD-WB-CIAT, 2022

Countries willing to conduct a Digital VAT reform are welcome to use the toolkit with additional support provided by development partners, such as the IDB, that can provide guidance, experience from third countries, and leverage, bringing strong non-partisan support for tax and administration reforms.

f. The IDB comparative advantage in supporting Digital VAT reforms

The IDB, through its Fiscal Division, is a long-time strategic ally and trusted advisor for the ministries of finance in Latin America. It has supported tax policy and administrative reforms in all countries, bringing knowledge, expertise, and financial support. We provide technical cooperation to achieve robust institutions and domestic resource mobilization. The lines of action and operational activities include:

1. ***Loans.*** From 2010 to 2021, the Bank approved a total of US$ 20 billion for fiscal sector operations (139 loans), accounting for roughly 15 per cent of the total sovereign-guaranteed loans approved. Through these projects, the Bank has established a track record of credibly supporting the main fiscal management reforms and improvements in the region.
2. ***Technical cooperation.*** The Bank supports fiscal institutions in LAC by strengthening their governance, instruments, and knowledge. The Bank provides financial support for analytical studies, databases, and the preparation of loan operations, fostering regional exchanges of good practices, and supporting the Bank's strategic knowledge and dissemination initiatives. From 2017 to 2021, the Bank approved technical cooperation projects for the Sector totalling roughly US$ 36 million (141 projects), with an emphasis on promoting digital solutions for fiscal management, including electronic invoicing.
3. ***The Sector's knowledge products.*** The Bank has developed a broad range of knowledge products in the Sector, which have bolstered its reputation in fiscal matters and positioned it as a trusted advisor to the countries. Examples are Jorratt (2020) and IDB-OECD- WB-CIAT (2022).
4. ***The Sector's dissemination work.*** The Bank has worked intensively to promote the exchange of Sector knowledge between the region's countries and generate learning opportunities in the preparation and execution of its programs. Articles in the

blog Recaudando Bienestar, discussing among other topics the Digital VAT (Pineda and Gonzalez, 2021, González de Frutos 2022), reach out to more than 50,000 subscribers. Also important are regional workshops and policy dialogues.

5. ***Sector collaboration and complementarity with other international organizations.*** Just like in the development of the toolkit, the Bank routinely engages with other international organizations whenever we perceive that collaboration will provide more constructive advice and stronger support to LAC countries. This approach provides flexibility when countries are interested in working with other Ios and avoids the duplication of efforts.
6. ***Regional cooperation.*** Regional cooperation on tax policy in Latin America remains modest, unlike in the European Union, where the European Commission and the European Parliament have institutionalized dialogue on tax cooperation. On Digital VAT however, there is a clear need for regional policies that the IDB is prepared to support. One example is co-operative compliance, where we intend to facilitate regional agreements with large multinationals. Another example is supporting smaller economies to perform tax audits on large multinational companies. Regional cooperation, understanding tax implications and conducting joint audits are adequate responses that the IDB is capable of brokering. As such, strengthening regional cooperation and ultimately implementing VAT systems that are simple and convergent will spur trade and investment.

Leveraging these advantages, the IDB is currently running support programs for Argentina and the Dominican Republic, with other support programs in the pipeline. The most used instrument so far is non-reimbursable technical co-operations, but countries in need of financial support to implement their reform are eligible for loan operations.

g. Conclusion

Digitalization has changed our consumption patterns, and the size of the digital economy continues to grow. VAT systems were designed before the rise of the digital economy, and they need to be adapted to provide certainty to taxpayers and protect the integrity of the VAT. Without action from Governments, the compliance gap will grow and so will other unwanted effects, including the distortion of competition. LAC countries are already implementing reforms, but LAC is a very diverse region, where some countries have a fairly developed digital market and adequate tax policies, while others are lagging. The IDB supports tax reforms through technical cooperation and other development instruments to facilitate the growth of the digital economy and the mobilization of domestic resources by putting in place reforms that are aligned with the international standards and best practices.

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